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6 Attorneys for Plaintiff
CHARLES MAIER

7
8 THE UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 In re:
12 PG&E CORPORATION,
13 - and -
14 PACIFIC GAS AND ELECTRIC
15 COMPANY,
16 Debtors.

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11

Superior Court Case
No.: 18CV01718

17 Federal I.D. No. 94-0742640
18 Federal I.D. No. 94-3234914

**DECLARATION OF AARON J.
MOHAMED IN SUPPORT OF
PLAINTIFF'S MOTION FOR RELIEF
FROM THE AUTOMATIC STAY.**

19 HEARING DATE
20 DATE: MARCH 7, 2023
21 TIME: 10:00 AM
PLACE: 235 Pine Street, 22nd Floor
San Francisco, CA

22 I, Aaron J. Mohamed, hereby declare as follows:

23 1. I am an attorney licensed to practice before all the courts of this state. I
24 am counsel for Charles Maier in this matter. The contents of this declaration are true
25 and correct, as to my own personal knowledge. As to those matters stated on
26 information and belief, I am informed and believe them to be true. If called to testify
27 regarding these matters, I could do so competently.
28

1 2. This declaration is submitted in support of Plaintiff's Motion for Relief from
2 Automatic Stay.

3 3. Plaintiff filed this action in October of 2018. This upcoming October will
4 mark five years since the action was initiated. My office served discovery shortly after
5 and my client was deposed on December 19, 2018. Debtor's employee, Daniel Waters,
6 was deposed on December 20, 2018.

7 4. Debtor filed and served their Motion for Summary Judgment on January
8 10, 2018. A true and correct copy of Debtor's Motion is attached hereto as Exhibit A.

9 5. Plaintiff served and filed his Motion for Summary Judgment on January
10 14, 2018. A true and correct copy of Plaintiff's Motion is attached hereto as Exhibit B.
11 The motions were scheduled to be heard on March 28, 2019.

12 6. Debtor filed for bankruptcy on January 29, 2019, and the hearing for both
13 Motions for Summary Judgment was taken off calendar pursuant to the automatic stay.

14 7. On March 27, 2019, I emailed counsel for Debtors requesting that Debtors
15 stipulate to lift the automatic bankruptcy stay as it relates to this action and allow the
16 action to proceed to judgment in Santa Cruz Superior Court. I never received a
17 response to this letter. A true and correct copy of this letter is attached hereto as
18 Exhibit C.

19 8. On June 14, 2019, Plaintiff filed his proof of claim. On June 25, 2021, the
20 court issued an Order Disallowing and Expunging his claim no. 1896.


21 9. Cause exists to grant relief from the automatic stay in this matter. This
22 case is a simple prescriptive easement case, seeking non-monetary damages.
23 Proceeding in Santa Cruz Superior Court would resolve all of the issues in the matter, it
24 would not interfere with the bankruptcy case, and financial and judicial economy weigh
25 in favor of relief from stay.

26 10. The five-year anniversary of the complaint's filing is coming up this
27 October. It is likely the case will be set for trial or resolved in or around that month if the
28

1 case is allowed to proceed in the Santa Cruz Superior Court. For the foregoing
2 reasons, we request relief from the automatic stay.

3 I declare under penalty of perjury under the laws of the State of California that
4 the foregoing is true and correct.

5
6
7 Dated: February 14, 2023



Aaron J. Mohamed, Esq.

Exhibit A

GOUGH & HANCOCK LLP
GAYLE L. GOUGH (SBN 154398)
gayle.gough@ghcounsel.com
SARA N. DUNCAN (SBN 262122)
sara.duncan@ghcounsel.com
Two Embarcadero Center, Suite 640
San Francisco, CA 94111
Telephone: 415-848-8900

Attorneys for Defendant
PACIFIC GAS AND ELECTRIC COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

CHARLES MAIER, an individual,
Plaintiff,

v.

PACIFIC GAS AND ELECTRIC COMPANY,
a California Corporation, and DOES 1 - 50,
Defendants.

CASE NO. 18CV01718

**DEFENDANT PACIFIC GAS AND
ELECTRIC COMPANY'S NOTICE AND
MOTION FOR SUMMARY JUDGMENT**

Complaint Filed: June 18, 2018
Trial Date: April 29, 2019

Date: March 28, 2019
Time: 8:30 a.m.
Dept: 5
Judge: Hon. Paul Burdick

Filed Herewith: Memorandum of Points and
Authorities; Separate Statement of Undisputed
Facts; Evidence in Support; Request for
Judicial Notice

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that in this proceeding on March 28, 2019 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 5 of the Superior Court of the State of California, County of Santa Cruz, located at 701 Ocean Street, Santa Cruz, CA 95060, Defendant Pacific Gas and Electric Company ("PG&E") will, and hereby does, move the Court for an order entering summary judgment on Plaintiff Charles Maier's (Plaintiff's) complaint in favor of PG&E pursuant to Code of Civil Procedure section 437c. The motion is made on the grounds

1 that the undisputed material facts establish that Plaintiff's claims are barred by Civil Code
2 section 1007, which provides that land owned by a public utility and dedicated to a public use is
3 not subject to title by prescription. All of the elements are satisfied in this case and PG&E is
4 entitled to summary judgment as a matter of law.

5 This motion is based on this Notice, the accompanying Memorandum of Points and
6 Authorities, Separate Statement of Undisputed Material Facts, Evidence in Support of Motion for
7 Summary Judgment, Request for Judicial Notice and all exhibits attached thereto, the pleadings
8 and papers filed in this case, and such other argument and evidence as may be presented to the
9 Court.

10 DATED: January 10, 2019

GOUGH & HANCOCK LLP

11
12 By: 

13 GAYLE L. GOUGH
14 SARA N. DUNCAN
Attorneys for Defendant
15 PACIFIC GAS AND ELECTRIC COMPANY
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Gough & Hancock LLP, Two Embarcadero Center, Suite 640, San Francisco, CA 94111. On January 10, 2019, I served the within document(s):

**DEFENDANT PACIFIC GAS AND ELECTRIC COMPANY'S
NOTICE OF MOTION FOR SUMMARY JUDGMENT**

<input type="checkbox"/>	FACSIMILE – by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date.
<input type="checkbox"/>	MAIL – by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
<input type="checkbox"/>	PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
<input type="checkbox"/>	ELECTRONIC – by electronically transmitting the document(s) listed above to the electronic notification address(es) of the addressee(s) listed below.
<input checked="" type="checkbox"/>	OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via FEDERAL EXPRESS .

Brad C. Brereton
Aaron J. Mohamed
BRERETON LAW OFFICE
1362 Pacific Avenue, Suite 220
Santa Cruz, CA 95060

Attorney for Plaintiff
CHARLES MAIER
Tel: (831) 429-6391 | Fax: (831) 459-8298
ajm@brereton.law

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on January 10, 2019, at San Francisco, California.


Jennifer McNeil

PROOF OF SERVICE

GOUGH & HANCOCK LLP
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Attorneys for Defendant
PACIFIC GAS AND ELECTRIC COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

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Plaintiff,

v.

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a California Corporation, and DOES 1 - 50,

Defendants.

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Separate Statement of Undisputed Facts;
Evidence in Support; Request for Judicial
Notice

I. INTRODUCTION

Defendant Pacific Gas and Electric Company ("PG&E") moves for summary judgment on Plaintiff's complaint for declaratory and injunctive relief. Plaintiff Charles Maier alleges that he obtained a prescriptive easement over the PG&E Araña Substation in the County of Santa Cruz, California. The Araña Substation delivers electricity to approximately 1,200 members of the public in the Santa Cruz area. The substation abuts Plaintiff's backyard and includes

1 enclosed, energized electrical equipment, as well as an unimproved buffer zone adjacent to the
2 equipment. The unimproved buffer zone is necessary and incidental to the delivery of electricity,
3 serving as an important safety buffer as well as a location for onsite substation meetings,
4 substation storage and potential equipment expansion. Plaintiff alleges he used the unimproved
5 buffer zone of the Araña Substation for ingress and egress to the backyard of his residential
6 property in an open and hostile manner, under claim of right, for over five years prior to the
7 commencement of this action.

8 Civil Code section 1007 bars Plaintiff's claims in their entirety, providing that property
9 owned by a public utility and dedicated to a public use may never ripen into an easement by
10 prescription. The Araña Substation is owned and operated by PG&E, an investor-owned public
11 utility for purposes of California law. The entire Araña Substation, including both the enclosed,
12 energized electrical equipment and the unimproved buffer zone adjacent to the equipment, is
13 dedicated to public use for the delivery of electricity to the public. PG&E respectfully requests
14 that the Court grant its motion for summary judgment on Plaintiff's complaint.

15 **II. STATEMENT OF UNDISPUTED FACTS**

16 PG&E is an investor-owned public utility regulated by the California Public Utilities
17 Commission ("CPUC"), providing natural gas and electric service to approximately 16 million
18 people throughout a 70,000-square-mile service area in northern and central California.
19 (*Pegastaff v. Public Utilities Commission* (2015) 236 Cal.App.4th 374, 378; UMF 1.) PG&E is
20 the owner of record title to the parcel of real property located on Bostwick Lane within the
21 County of Santa Cruz, now designated as Assessor's Parcel Number ("APN") 026-022-05.
22 (County of Santa Cruz Assessor's Map No. 26-02; UMF 2.)¹ This parcel has functioned as an
23 electric substation known as the Araña Substation since in or around 1952. (UMF 3.)

24 The Araña Substation is zoned "PF" for "Public and Community Facilities" within the
25 County of Santa Cruz. (Santa Cruz County Parcel Information Detail Report for APN 026-022-
26

27
28 ¹ The County of Santa Cruz Assessor's Map No. 26-02 is attached as Exhibit A to the Request for
Judicial Notice ("RJN") filed herewith.

05; Basic Zone Districts – Summary of Uses; UMF 4.)² The Araña Substation serves the public and facilitates PG&E’s operation as a public utility by supplying approximately 1,200 customers with electricity. (UMF 5.) The parcel contains not only an area of enclosed, energized electrical equipment, but an unimproved buffer zone to the east of the equipment. (UMF 6.) The buffer zone of the Araña Substation serves as a safety buffer between the energized electrical equipment and the public. (UMF 7.) PG&E utilizes the buffer zone of the Araña Substation for storage and laydown of materials, onsite parking and substation meetings. (UMF 8.) The electrical equipment situated at the Araña Substation will expand to the buffer zone when the load in the area increases. (UMF 9.)

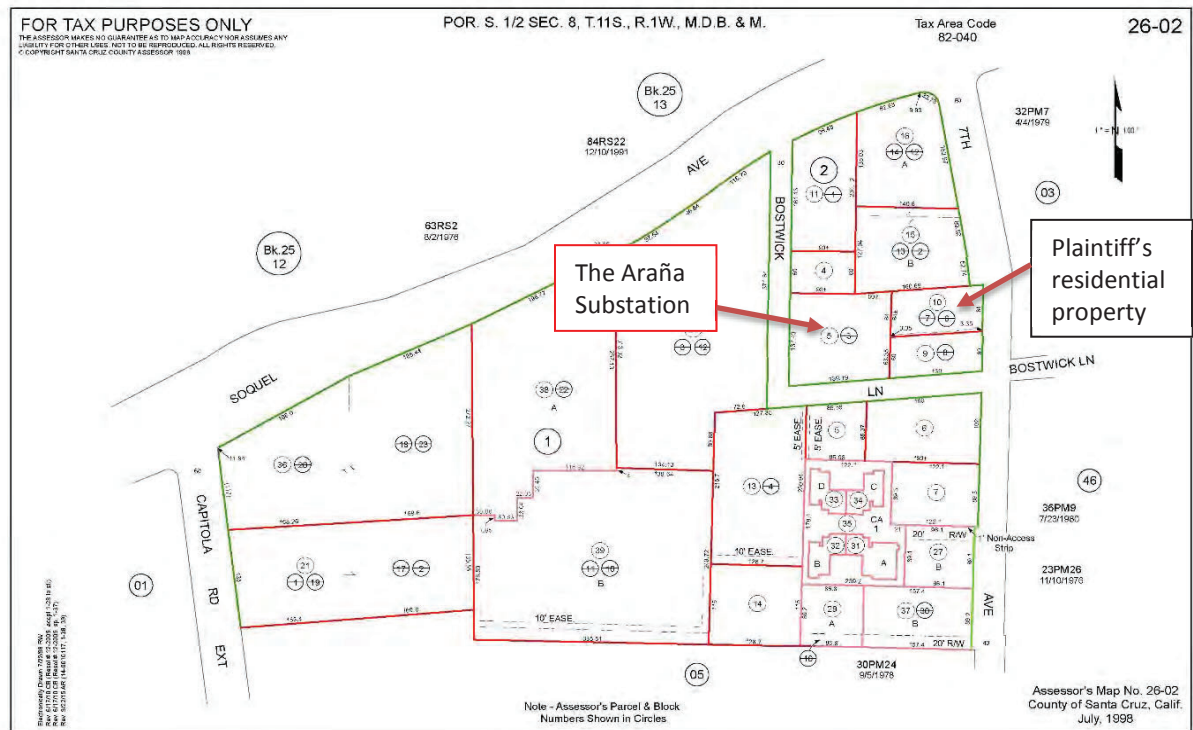
Plaintiff Charles Maier is the current holder of record title to the residential parcel designated as APN 026-022-10, located at 2521 Seventh Avenue in the County of Santa Cruz, California. (Santa Cruz County Parcel Information Detail Report for APN 026-022-10; Basic Zone Districts – Summary of Uses; UMF 10.)³ The backyard of the residential parcel owned by Plaintiff abuts the eastern portion of the unimproved buffer zone of the Araña Substation. (UMF 11.) Plaintiff alleges that since he acquired the residential property in 2004, he used the unimproved buffer zone of the Araña Substation to access his backyard. (UMF 12.) PG&E received complaints from neighbors regarding trespassing on the unimproved buffer zone of the Araña Substation in or around 2016. (UMF 13.) The trespassing was of great concern to PG&E due to safety issues and the possibility of contaminants, as PG&E substations have specific soil requirements. (UMF 14.) PG&E constructed a fence around the unimproved buffer zone of the Araña Substation in or around May 2018. (UMF 15.) PG&E plans to use the newly secured area to store materials related to repair of electrical equipment at the substation in the first quarter of 2019. (UMF 16.)

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² The Santa Cruz County Parcel Information Detail Report for APN 026-022-05 is attached as Exhibit B to the RJN filed herewith. Basic Zone Districts – Summary of Uses by the Santa Cruz Planning Department is attached as Exhibit D to the RJN filed herewith.

³ The Santa Cruz County Parcel Information Detail Report for APN 026-022-10 is attached as Exhibit C to the RJN filed herewith. Basic Zone Districts – Summary of Uses by the Santa Cruz Planning Department is attached as Exhibit D to the RJN filed herewith.

For purposes of orienting the Court, the Santa Cruz County Assessor's Map depicting both the Araña Substation (APN 026-022-05) and the residential property owned by Plaintiff (APN 026-022-10) is included below.⁴



III. PLAINTIFF'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

On June 15, 2018, Plaintiff Charles Maier filed the complaint in this action against Defendant PG&E. Plaintiff alleged three causes of action: (1) declaratory relief; (2) injunctive relief; and (3) private nuisance. Plaintiff agreed to dismiss his third cause of action for private nuisance at the October 12, 2018 Case Management Conference. (Plaintiff's Response to Defendant PG&E's Special Interrogatories, Set One, No. 16, attached as Exhibit K to the Declaration of Sara N. Duncan.)

Plaintiff claims that he obtained a prescriptive easement over the unimproved buffer zone of the Araña Substation, as he used that portion of the parcel for ingress and egress to his residential property, in an open and hostile manner, under claim of right, for over five years prior

⁴ The County of Santa Cruz Assessor's Map No. 26-02 is attached as Exhibit B to the RJN filed herewith. The text boxes and arrows have been added to provide context.

1 to the commencement of this action. (Complaint, ¶ 9.) Plaintiff alleges that the fencing installed
2 by PG&E in or around May 2018 impedes his access to and use of the unimproved buffer zone
3 of the Araña Substation. (Complaint, ¶ 10.) Plaintiff seeks a declaration establishing his alleged
4 rights in the unimproved buffer zone of the Araña Substation; a preliminary and permanent
5 injunction ordering PG&E to remove all fencing surrounding unimproved buffer zone of the
6 Araña Substation, and enjoining PG&E from all further acts and omissions which interfere with
7 Plaintiff's access to the buffer zone; and damages according to proof, including costs of suit.
8 (Complaint, Relief Sought, ¶¶ 1-5.) PG&E filed an answer, denied Plaintiff's allegations, and
9 asserted that Civil Code section 1007 bars Plaintiff's claims. (Answer, ¶¶ 2-16.)

10 **IV. LEGAL DISCUSSION**

11 **A. SUMMARY JUDGMENT IS PROPER BECAUSE THERE IS NO** 12 **TRIALABLE ISSUE OF MATERIAL FACT**

13 The Court properly grants summary judgment where there is no disputed question of
14 material fact and the issues raised by the pleadings may be decided as a matter of law. (Code
15 Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843; *Juge*
16 *v. County of Sacramento* (1993) 12 Cal.App.4th 59, 67 [matters at issue determined by
17 pleadings].) “[T]he complaint provides the framework within which to determine the motion”
18 for summary judgment.” (*Bro v. Glaser* (1994) 22 Cal.App.4th 1398, 1406.) “The burden of a
19 defendant moving for summary judgment only requires that he or she negate plaintiff's theories
20 of liability as alleged in the complaint.” (*Tsemetzin v. Coast Federal Savings & Loan Assn.*
21 (1997) 57 Cal.App.4th 1334, 1342, emphasis omitted.) The purpose of the summary judgment
22 motion is to expedite litigation by avoiding needless trials and to “penetrate through evasive
23 language and inept pleading and to ascertain the existence or absence of triable issues.” (*Chern*
24 *v. Bank of America* (1976) 15 Cal.3d 866.)

25 “[A]ll that the defendant need do is to show that the plaintiff cannot establish at least one
26 element of the cause of action.... [T]he defendant need not himself conclusively negate any such
27 element....” (*Aguilar, supra*, 25 Cal.4th at p. 853.) The burden then shifts to the plaintiff to
28 show the existence of a triable issue of fact with respect to that cause of action. (Code Civ.

1 Proc., § 437c, subd. (p)(2); *Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 261; see also
2 *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 780 “[T]he moving defendant may ...
3 point to the absence of evidence to support the plaintiff’s case. When that is done, the burden
4 shifts to the plaintiff to present evidence showing there is a triable issue of material fact.”.) To
5 carry its burden the non-moving party must “do more than simply show that there is some
6 metaphysical doubt as to the material facts.” (*Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio*
7 *Corp.* (1986) 475 U.S. 574, 586; *Aguilar, supra*, 25 Cal.4th at p. 848 [finding that Code Civ.
8 Proc. section 437c was amended to bring California law into conformity with the standards in
9 *Matsushita*.].)

10 PG&E’s motion for summary judgment must be granted because the undisputed material
11 facts show that the entire Araña Substation is dedicated to a public use by a public utility. Such
12 property is not subject to acquisition of title by prescription pursuant to Civil Code section 1007.

13 **B. CIVIL CODE SECTION 1007 BARS PLAINTIFF’S CLAIMS AGAINST**
14 **PG&E**

15 The entire Araña Substation is immune from prescription under Civil Code section 1007.
16 In California, a user of land may establish a prescriptive easement by proving that his or her use
17 of another’s land was: (1) continuous and uninterrupted for five years; (2) open and notorious;
18 and (3) hostile. (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570-72;
19 *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449-50; see also Civ. Code, § 1007; Code Civ.
20 Proc., § 321). However, under Civil Code section 1007, property owned by a public utility and
21 dedicated to a public use is not subject to acquisition of prescriptive rights. This statute
22 provides:

23 ... no possession by any person, firm or corporation no matter how
24 long continued of any land, water, water right, easement, or other
25 property whatsoever dedicated to a public use by a public utility, or
dedicated to or owned by the state or any public entity, shall ever
26 ripen into any title, interest or right against the owner thereof.

(Civ. Code § 1007; emphasis added.)

27 PG&E is a public utility under California law, and the entire Araña Substation is
28 dedicated to a public use for the delivery of electricity to the public. Plaintiff is not entitled to a

1 prescriptive easement over any portion of the Araña Substation, despite any alleged open,
2 notorious, and hostile use of the unimproved buffer zone for a five-year period. For these
3 reasons, judgment should be entered in favor of PG&E.

4 1. PG&E is a Public Utility Under California Law

5 PG&E is a public utility under California law. (UMF 1.) Article XII, section 3 of the
6 California Constitution provides the following definition of public utilities:

7 *Private corporations and persons that own, operate, control, or*
8 *manage a line, plant, or system for the transportation of people or*
9 *property, the transmission of telephone and telegraph messages, or*
10 *the production, generation, transmission, or furnishing of heat,*
11 *light, water, power, storage, or wharfage directly or indirectly to or*
12 *for the public, and common carriers, are public utilities subject to*
13 *control by the Legislature. The Legislature may prescribe that*
14 *additional classes of private corporations or other persons are public*
15 *utilities. (Emphasis added.)*

16 The statutory definition of a public utility established by the Public Utilities Code is similar: “(a)
17 ‘Public utility’ includes every ... electrical corporation ... where the service is performed for, or
18 the commodity is delivered to, the public or any portion thereof.” (Pub. Util. Code, § 216, subd.
19 (a).) PG&E, an investor-owned utility regulated by the CPUC which provides natural gas and
20 electric service to approximately 16 million people (UMF 1), clearly meets the definition of a
21 public utility articulated by both the California Constitution and the Public Utilities Code. As
22 such, any property owned by PG&E and dedicated to a public use may not ripen into an
23 easement by prescription.

24 2. The Unimproved Buffer Zone of the Araña Substation is Dedicated to a
25 Public Use

26 Despite Plaintiff’s claims regarding his use of the unimproved buffer zone of the Araña
27 Substation, the entire Araña Substation is dedicated to a public use by PG&E, and therefore no
28 portion of the property may ripen into a prescriptive easement under Civil Code section 1007. It
is well-established that land such as the unimproved buffer zone is dedicated to a public use.
The “public use” of the unimproved buffer zone is similar to that of property owned by railroads
adjacent to tracks and adjoining stations, in that such property is necessary and incidental to the
function of the utility. Railroads that perform a service for, or deliver a commodity to, the public

1 or any portion thereof for which any compensation or payment whatsoever is received are also
2 considered public utilities under California law. (See Pub. Util. Code, §§ 211, 216.)

3 In *Central Pac. Ry. Co. v. Droge* (1915) 171 Cal. 32, 39-40, the California Supreme
4 Court held that an unfenced strip of land owned by a railroad surrounding a fenced railroad track
5 was not subject to adverse possession. While the claimant in *Central Pac. Ry. Co.* alleged that
6 he held possession of the land surrounding the fenced railroad track adversely, under claim of
7 title, uninterruptedly for 41 years prior to the action, and that he had paid the taxes for that
8 period, the Court noted that the entire strip of land owned by the railroad, both the fenced track
9 and the area outside the fencing, was necessary for public use. (*Id.* at p. 41.) Therefore, no
10 portion of the land owned by the railroad and necessary for public use could ripen into any title
11 against the railroad. In a second case, the Court of Appeal noted that Southern Pacific Railroad
12 Company's use of an uncultivated strip adjoining its railroad station as a place to turn freight
13 trucks and other vehicles, and as a means of access to the depot and loading platforms was "a
14 public use" necessary and incidental to its shipping service. (*Churchill v. Kellstrom* (1943) 58
15 Cal.Ap.2d 84, 88-89.)

16 Courts also consider the delivery of electricity through facilities owned by a public utility
17 to be a public use in the context of eminent domain. The power of eminent domain may be
18 exercised to acquire property only for a public use. (Cal. Const. art. I § 19.) Investor-owned
19 public utilities such as PG&E have been given the power by the Legislature to exercise eminent
20 domain under Public Utilities Code section 612, which states: "An electrical corporation may
21 condemn any property necessary for the construction and maintenance of its electric
22 plant." Public Utilities Code section 217 defines electrical plant as:

23 *[A]ll real estate, fixtures and personal property owned, controlled,*
24 *operated, or managed in connection with or to facilitate the*
25 *production, generation, transmission, delivery, or furnishing of*
26 *electricity for light, heat, or power, and all conduits, ducts, or other*
27 *devices, materials, apparatus, or property for containing, holding, or*
28 *carrying conductors used or to be used for the transmission of*
electricity for light, heat, or power. (Emphasis added.)

1 Both the energized electrical equipment and unimproved buffer zone of the Araña Substation are
2 real estate owned to facilitate the delivery of electricity and would clearly qualify as a public use
3 for eminent domain purposes.⁵

4 As evidenced by case law, PG&E is a public utility and the entire Araña Substation is
5 undoubtedly dedicated to a public use. The Araña Substation currently supplies approximately
6 1,200 of the public with electricity. (UMF 5.) The unimproved buffer zone of the Araña
7 Substation serves not only as a safety buffer between the energized electrical equipment and the
8 public (UMF 7) but is also utilized by PG&E for purposes necessary and incidental to the
9 delivery of electricity, such as lay-down or storage of materials, onsite parking and substation
10 meetings. (UMF 8.) In addition, the electrical equipment on the Araña Substation Property will
11 expand to the unimproved buffer zone when the load in the area increases to a level that
12 necessitates such expansion. (UMF 9.) As both the electrical equipment and the unimproved
13 buffer zone of the Araña Substation are dedicated to a public use, i.e. the provision of electricity
14 to the public, Plaintiff is barred from prescriptive rights to any portion of the Araña Substation
15 under Civil Code section 1007 despite any alleged use of the parcel.

16 **V. CONCLUSION**

17 The Araña Substation is land owned by a public utility and dedicated to a public use.
18 Such property is not subject to acquisition of title by prescription under Civil Code section 1007,
19 and PG&E is well within its rights to install fencing around the unimproved buffer zone. For
20 these reasons, this motion should be granted, and judgment should be entered in favor of PG&E.

21 DATED: January 10, 2019

GOUGH & HANCOCK LLP

23 By: 

24 GAYLE L. GOUGH
25 SARA N. DUNCAN
26 Attorneys for Defendant
27 PACIFIC GAS AND ELECTRIC COMPANY

28 ⁵ Courts have also held that an improvement used for the delivery of electricity satisfies the public use requirement for inverse condemnation purposes. (*See Barham v. Southern California Edison Co.* (1999) 74 Cal.App.4th 744, 751.)

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PROOF OF SERVICE

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Brad C. Brereton
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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on January 10, 2019 at San Francisco, California.


Jennifer McNeil

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

CHARLES MAIER, an individual,

Plaintiff,

v.

PACIFIC GAS AND ELECTRIC COMPANY,
a California Corporation, and DOES 1 - 50,

Defendants.

CASE NO. 18CV01718

**PACIFIC GAS AND ELECTRIC
COMPANY'S SEPARATE STATEMENT
OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Complaint Filed: June 18, 2018
Trial Date: April 29, 2019

Date: March 28, 2019
Time: 8:30 a.m.
Dept: 5
Judge: Hon. Paul Burdick

Filed Herewith: Notice of Motion;
Memorandum of Points and Authorities;
Evidence in Support; Request for Judicial
Notice

Pursuant to Code of Civil Procedure section 437c, subdivision (b), and California Rules of Court, Rule 3.1350, Defendant Pacific Gas and Electric Company ("PG&E") submits the following separate statement of undisputed material facts in support of its motion for summary judgment, as to the Complaint and each cause of action therein, filed by Plaintiff Charles Maier. The supporting evidence referenced herein is attached as exhibits to PG&E's Evidence in Support of Motion for Summary Judgment and Declaration of Sara N. Duncan submitted

herewith.

UNDISPUTED MATERIAL FACTS IN SUPPORT OF SUMMARY JUDGMENT

PG&E identifies the following undisputed facts, nos. 1 through 16, in support of PG&E's request for summary judgment on Plaintiff's complaint and each cause of action therein.

	<u>MOVING PARTY’S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u>	<u>OPPOSING PARTY’S RESPONSE AND SUPPORTING EVIDENCE</u>
1.	<p>PG&E is an investor-owned public utility regulated by the California Public Utilities Commission (“CPUC”), providing natural gas and electric service to approximately 16 million people throughout a 70,000-square-mile service area in northern and central California.</p> <p>S E : Plaintiff’s Complaint, Santa Cruz County Superior Court Case No. 18CV01718, ¶¶ 2, 7, attached to the declaration of Sara N. Duncan as E G; Declaration of Alexandro Soria, ¶ 3; Excerpts from the Deposition of Daniel Waters, taken on December 20, 2018, at pp. 59:25-60:6, attached to the Declaration of Sara N. Duncan as E I.</p>	
2.	<p>PG&E is the owner of record title to the parcel of real property located on Bostwick Lane within the County of Santa Cruz, now designated as Assessor’s Parcel Number (“APN”) 026-022-05</p> <p>S E : 1952 Grant Deed Conveying property to Coast County Gas and Electric, attached to the Declaration of Alexandro Soria as E A; County of Santa Cruz Assessor’s Map 26-02, attached as E A to Request for Judicial Notice (“RNJ”) and attached to the Declaration of Alexandro Soria as E C; Declaration of Alexandro Soria, ¶¶ 4, 6; Plaintiff’s Complaint, Santa Cruz County Superior Court Case No. 18CV01718, ¶ 6, attached to the declaration of Sara N. Duncan as E G; Exhibit A to Plaintiff’s Complaint, Santa Cruz County Superior Court Case No. 18CV01718, attached to the declaration of Sara N. Duncan as E G.</p>	

	<u>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u>	<u>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</u>
3.	<p>This parcel has functioned as an electric substation known as the Araña Substation since in or around 1952.</p> <p>S E : 1953 map maintained in PG&E's records of the Araña Substation property, attached as E B to the Declaration of Alexandro Soria; Declaration of Alexandro Soria, ¶ 5.</p>	
4.	<p>The Araña Substation is zoned "PF" for "Public Facility" within the County of Santa Cruz.</p> <p>S E : Santa Cruz County Parcel Information Detail Report for APN 026-022-05, attached as E B to RJN and E D to the Declaration of Alexandro Soria; Basic Zone Districts – Summary of Uses, attached as E D to RJN and E F to the Declaration of Alexandro Soria; Declaration of Alexandro Soria, ¶¶ 7, 9.</p>	
5.	<p>The Araña Substation serves the public and facilitates PG&E's operation as a public utility by supplying approximately 1,200 customers with electricity.</p> <p>S E : Excerpts from the deposition of Daniel Waters, taken on December 20, 2018 at pp. 59:25-60:6 and 62:1-10, attached to the declaration of Sara N. Duncan as E I Plaintiff's Complaint, Santa Cruz County Superior Court Case No. 18CV01718, ¶ 7, attached to the Declaration of Sara N. Duncan as E G.</p>	
6.	<p>The parcel contains not only an area of enclosed, energized electrical equipment, but an unimproved buffer zone to the east of the equipment.</p> <p>S E : Excerpts from the deposition of Daniel Waters taken on December 20, 2018 at pp. 17:10-20; attached to the declaration of Sara N. Duncan as E I; Plaintiff's Complaint, Santa Cruz County Superior Court Case No. 18CV01718, ¶¶ 7,8.</p>	

	<u>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u>	<u>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</u>
7.	<p>The buffer zone of the Araña Substation serves as a safety buffer between the energized electrical equipment and the public.</p> <p>S E : Excerpts from the deposition of Daniel Waters, taken on December 20, 2018 at p. 60:7-17, attached to the declaration of Sara N. Duncan as E I.</p>	
8.	<p>PG&E utilizes the buffer zone of the Araña Substation for storage and laydown of materials, onsite parking and substation meetings.</p> <p>S E : Excerpts from the deposition of Daniel Waters, taken on December 20, 2018 at p. 60:7-17, attached to the declaration of Sara N. Duncan as E I.</p>	
9.	<p>The electrical equipment situated at the Araña Substation will expand to the buffer zone when the load in the area increases.</p> <p>S E : Excerpts from the deposition of Daniel Waters, taken on December 20, 2018 at p. 60:7-17, attached to the declaration of Sara N. Duncan as E I.</p>	
10.	<p>Plaintiff Charles Maier is the current holder of record title to the residential parcel designated as APN 026-022-10, located at 2521 Seventh Avenue in the County of Santa Cruz, California.</p> <p>S E : Plaintiff's Complaint, Santa Cruz County Superior Court Case No. 18CV01718, ¶ 5, attached to the declaration of Sara N. Duncan as E G; Excerpts from the deposition of Plaintiff Charles Maier, taken on December 19, 2018 at p. 21:2-7, attached to the Declaration of Sara N. Duncan as E J Santa Cruz County Parcel Information report for APN 026-022-10, attached as E C to RJN and E E to the Declaration of Alexandro Soria; Basic Zone Districts – Summary of Uses, attached as E D to RJN and E F to the Declaration</p>	

	<u>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u>	<u>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</u>
	of Alexandro Soria; Declaration of Alexandro Soria, ¶¶ 8, 9.	
11.	<p>The backyard of the residential parcel owned by Plaintiff abuts the eastern portion of the unimproved buffer zone of the Araña Substation.</p> <p>S E : Excerpts from the deposition of Plaintiff Charles Maier taken on December 19, 2018 at p. 16:14-16, attached to the Declaration of Sara N. Duncan as E J Plaintiff's Complaint, Santa Cruz County Superior Court Case No. 18CV01718, ¶ 8, attached to the declaration of Sara N. Duncan as E G.</p>	
12.	<p>Plaintiff alleges that since he acquired the residential property in 2004, he used the unimproved buffer zone of the Araña Substation to access his backyard.</p> <p>S E : Plaintiff's Complaint, Santa Cruz County Superior Court Case No. 18CV01718, ¶¶ 5, 9, attached to the declaration of Sara N. Duncan as E G.</p>	
13.	<p>PG&E received complaints from neighbors regarding trespassing on the unimproved buffer zone of the Araña Substation in or around 2016.</p> <p>S E : Excerpts from the deposition of Daniel Waters taken on December 20, 2018 at pp. 17:21-18:7 attached to the declaration of Sara N. Duncan as E I.</p>	
14.	<p>The trespassing was of great concern to PG&E due to safety issues and the possibility of contaminants, as PG&E substations have specific soil requirements.</p> <p>S E : Excerpts from the deposition of Daniel Waters, taken on December 20, 2018 at pp. 44:11-45:4 and pp. 64:24-65:10, attached to the declaration of Sara N. Duncan as E I.</p>	

	<u>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u>	<u>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</u>
15.	PG&E constructed a fence around the unimproved buffer zone of the Araña Substation in or around May 2018. S E : Plaintiff's Complaint, Santa Cruz County Superior Court Case No. 18CV01718, ¶ 10, attached to the declaration of Sara N. Duncan as E G .	
16.	PG&E plans to use the newly secured area to store materials related to repair of electrical equipment at the substation in the first quarter of 2019. S E : Excerpts from the deposition of Daniel Waters taken on December 20, 2018 at pp. 60:18-61:8, attached to the declaration of Sara N. Duncan as E I .	

DATED: January 10, 2019

GOUGH & HANCOCK LLP

By: _____



GAYLE L. GOUGH
SARA N. DUNCAN
Attorneys for Defendant
PACIFIC GAS AND ELECTRIC COMPANY

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Gough & Hancock LLP, Two Embarcadero Center, Suite 640, San Francisco, CA 94111. On January 10, 2019, I served the within document(s):

**PACIFIC GAS AND ELECTRIC COMPANY'S
SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

<input type="checkbox"/>	FACSIMILE – by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date.
<input type="checkbox"/>	MAIL – by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
<input type="checkbox"/>	PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
<input type="checkbox"/>	ELECTRONIC – by electronically transmitting the document(s) listed above to the electronic notification address(es) of the addressee(s) listed below.
<input checked="" type="checkbox"/>	OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via FEDERAL EXPRESS .

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on January 10, 2019, at San Francisco, California.


Jennifer McNeil

PROOF OF SERVICE

Exhibit B

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County of Santa Cruz
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Alex Calvo, Clerk
By: Helena Hanson, Deputy

Helena J. Hanson

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CRUZ
UNLIMITED JURISDICTION

CHARLES MAIER, an individual,
Plaintiff.

v.

PACIFIC GAS AND ELECTRIC
COMPANY, a California Corporation, and
DOES 1-50,
Defendants.

CASE NO. 18CV01718

**PLAINTIFF CHARLES MAIER'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT OR IN
THE ALTERNATIVE SUMMARY
ADJUDICATION**

Date: March 28, 2019
Time: 8:30am
Dept: 5

NOTICE IS HEREBY GIVEN that at the above stated date and time, or as soon thereafter as this matter may be heard in Department 5 of this court, Plaintiff Charles Maier will and hereby does move this court, pursuant to California Code of Civil Procedure sections 437(c) and 437(f) for an order granting Summary Judgment or in the alternative, Summary Adjudication in favor of Plaintiff and against Defendant Pacific Gas and Electric Company. This motion is made on the grounds that there are no material facts in dispute and Plaintiff is entitled to Judgment as a matter of law.

Date: 1-11-19

Aaron J. Mohamed

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By: Aaron J. Mohamed
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Helena J. Hanson

11 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SANTA CRUZ
13 UNLIMITED JURISDICTION

14 CHARLES MAIER, an individual,
15 Plaintiff.

16 v.

17 PACIFIC GAS AND ELECTRIC
18 COMPANY, a California Corporation, and
19 DOES 1-50,
20 Defendants.

CASE NO. 18CV01718

**PLAINTIFF CHARLES MAIER'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
OR IN THE ALTERNATIVE SUMMARY
ADJUDICATION**

Date: March 28, 2019
Time: 8:30am
Dept: 5

21 Plaintiff Charles Maier hereby submits this Memorandum of Points and
22 Authorities supporting his Motion for Summary Judgment or in the alternative Summary
23 Adjudication before the court.
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TABLE OF CONTENTS

I. INTRODUCTION	1
II. FACTS	2
III. LEGAL ARGUMENT	4
STANDARD OF SUMMARY JUDGMENT	5
PLAINTIFF IS ENTITLED TO A PRESCRIPTIVE \	
EASEMENT OVER THE PG&E PROPERTY	5
BECAUSE PG&E HAS NOT DEDICATED THE	
EASEMENT AREA TO A PUBLIC USE,	
CIVIL CODE SECTION 10007 DOES NOT APPLY.	8
IV. CONCLUSION	12

TABLE OF AUTHORITIES

CASES:

<i>Aaron v. Dunham</i> (2006) 137 Cal.App.4th 1244	8
<i>Aguilar v. Atlantic Richfield Co.</i> (2001) 25 Cal.4th 826	4, 5
<i>Automobile Antitrust Cases I and II</i> (2016) 1 Cal.App.5th 127	4
<i>Connolly v. McDermott</i> (1984) 162 Cal.App.3d 973	7
<i>Felgenhauer v. Soni</i> (2004) 121 C.A. 4 th 445	7-8
<i>Gion v. City of Santa Cruz</i> (1970) 2 Cal.3d 29	10, 11
<i>Hails v. Martz</i> (1946) 28 Cal.2d 775	7
<i>Harrison v. Bouris</i> (1956) 139 Cal.App.2d 170	6
<i>Palos Verdes Corp. v. Housing Authority</i> (1962) 202 C.A.2d 827	9
<i>People v. Sayig</i> (1951) 101 Cal.App.2d 890 at p. 896	10
<i>Scher v. Burke</i> (2017) 3 Cal.5th 136	9
<i>Sylva v. Kuck</i> (1966) 240 Cal.App.2d 127	5
<i>Twin Peaks Land Co. v. Briggs</i> (1982) 130 Cal.App.3d 587	5
<i>Union Trans. Co. v. Sacramento</i> (1954) 42 C.2d 235	9
<i>Weideman v. Staheli</i> (1948)	6
88 Cal.App.2d 613	
<i>Zimmer v. Dykstra</i> (1974) 39 C.A.3d 422	5, 6
<i>Zunino v. Gabriel</i> (1960) 182 C.A.2d 613	5

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CALIFORNIA CODES & STATUTES:

California Civil Code § 1007	2, 6, 9, 10
Code Civ. Proc., § 437c, subd. C	5
Code Civ. Proc., § 437f, subds. (1),(2)	5
Civil Code section 1009.....	11

1 **I. INTRODUCTION**

2 This is a simple prescriptive easement case, the facts of which are not in
3 dispute. Plaintiff Charles Maier has been the owner of real property located on 7th
4 Avenue in the City of Santa Cruz since 2004. Defendant Pacific Gas and Electric
5 Company has been the owner of real property located on Bostwick Lane in the City of
6 Santa Cruz since the 1950s. The two properties share a common boundary.

7 Since Plaintiff became the owner of his property, he has regularly used a portion
8 of Defendant's property for parking and access to his back yard. Such use has been
9 continuous, in an open and notorious manner, under claim of right, for over five years.
10 Defendant does not genuinely dispute the fact of Plaintiff's use of their property.

11 In 2016, Defendant received complaints from a neighbor about local use of the
12 disputed property. Therefore Defendant determined to fence off the disputed portion of
13 its property and close it to all further use by Plaintiff, or any other members of the
14 public. Plaintiff filed this action, seeking to confirm his right to use of the property.

15 It is anticipated that Defendant will claim that their property is immune from
16 claims of prescription under Civil Code section 1007, which states that property
17 dedicated to a public use by a public utility is immune from prescription. However,
18 Defendant misapplies this statute, and there is no evidence that the property in
19 question has been dedicated to a public use. Therefore Civil Code 1007 does not
20 apply. Even if the property in question were dedicated to a public use, *such dedication*
21 *should actually prevent Defendant from denying access to the public, not allow them to*
22 *exclude the public.* Either way Plaintiff must prevail on his claims and be given access
23 to use the disputed section of Defendant's property.

24 There are no disputed issues of material fact herein. Plaintiff's use of
25 Defendant's property meets the standards for recognition of a prescriptive easement
26 over Defendant's property. Therefore the Court must grant Summary Judgment.

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1
2 **II. FACTUAL SUMMARY**

3 **A. Identity of Real Property in Dispute**

4 The properties in question are two parcels near the "midtown" area of the City of
5 Santa Cruz (Complaint, ¶7-8). Plaintiff Charles Maier is current holder of record title to
6 that parcel of real property commonly known as 2521 7th Avenue, Santa Cruz, California
7 95062, with Accessor's Parcel Number 026-022-10 (the "Maier Property"). (Statement
8 of Undisputed Material Facts ("SUMF") 1). Plaintiff has owned the Maier Property since
9 2004. (*Id.*) Defendant Pacific Gas and Electric Company ("PG&E") is the current
10 holder of record title to that parcel of real property located on Bostwick Lane, Santa
11 Cruz, California 95062, with Accessor's Parcel Number 026-22-05 (the "PG&E
12 Property"). (SUMF 2). Defendant, through a predecessor entity, acquired the PG&E
13 Property via grant deed in 1952. (SUMF 3).

14 The Maier Property and the PG&E Property are situated very close to one
15 another and share a common boundary. (SUMF 2, 5). The Maier Property is located
16 just around the 7th / Bostwick corner from the PG&E Property; the North-East boundary
17 of the PG&E Property touches the South-West boundary of the Maier Property (SUMF
18 4-7). Approximately one half of the PG&E Property (the western portion) has been
19 surrounded by walls and fencing for many years. (SUMF 6). This portion houses an
20 electrical substation known as the Arana Substation. (SUMF 4). The disputed portion
21 of the PG&E Property is the other half of it - the eastern portion of the PG&E Property
22 (the "Easement Area"). (SUMF 4-5, 7). The Easement Area is undeveloped and
23 contains no electrical equipment or other PG&E property. (SUMF 4-5). The Easement
24 Area does contain several large trees but otherwise appears as a vacant lot, having
25 been used by Plaintiff and other members of the public since time immemorial. (SUMF
26 5, 9-12).

27 ///

28 ///

1 **B. History of Plaintiff's Use of the Easement Area**

2 When Plaintiff purchased the Maier Property, the Easement Area was largely
3 overgrown and unused. (SUMF 10). PG&E has claimed that they were only obligated
4 to maintain "four feet" from the walls of the substation. (SUMF 10). Plaintiff spent time
5 and resources clearing out vegetation from the Easement Area so that it could be used
6 to access his backyard. (SUMF 10). Since Plaintiff purchased the Maier Property in
7 2004 he and his agents have continually used the Easement Area to access the
8 backyard of the Maier Property. (SUMF 10-12, 15-17). The manner and scope of use
9 has varied since 2004, but it was continuous until the Easement Area was fenced off by
10 Defendant. (SUMF 11-12). Plaintiff used the Easement Area to park vehicles, store
11 personal property, and for ingress and egress into his backyard. (SUMF 12). Further,
12 other neighbors to the parcels in question used the Easement Area for storage, parking,
13 and for access to the rear of their properties. (SUMF 11, 17). Neighbors to the
14 Easement Area previously installed play equipment onto the Easement Area (including
15 a tree-house and tire-swing) and neighborhood children would play in the Easement
16 Area on a regular basis. (SUMF 9).

17 In 2011, Plaintiff converted the Maier Property into a rental unit and moved out.
18 (SUMF 15). However, Plaintiff continued to regularly use the Easement Area in order to
19 access the backyard of the Maier Property for storage and access to personal property.
20 (SUMF 16). Plaintiff's rental tenants at the Maier Property also continuously used the
21 Easement Area until it was fenced off by Defendant (SUMF 17).

22 **C. Defendant's Treatment of the Easement Area**

23 Plaintiff never received nor did Defendant ever offer Plaintiff permission to use
24 the Easement Area. (SUMF 13). In fact, at all times since Plaintiff has owned the
25 Maier Property, Defendant has maintained a sign displayed prominently at the edge of
26 the Easement Area which reads "Public Parking Prohibited." (SUMF 8). Further, PG&E
27 representatives repeatedly told Plaintiff to cease and desist using the Easement Area
28 (SUMF 14).

1 In or around 2016, PG&E responded to complaints from a neighbor about the
2 continued use of the Easement Area. (SUMF 18). PG&E went through an internal
3 process to address this issue. (SUMF 19) During part of that process, Plaintiff
4 requested that he be able to rent the Easement Area from PG&E, and be given access
5 via a gate installed in the new fence. (SUMF 19-20). PG&E representatives even
6 provided Plaintiff with a form which *they* completed, requesting a lease over the
7 Easement Area. (SUMF 20) However, PG&E ultimately determined not to lease the
8 Easement Area to Plaintiff. (SUMF 21) Rather, Defendant decided to fence off the
9 Easement Area and prevent Plaintiff's use, as well as any public access to the
10 Easement Area. (SUMF 21).

11 **III. LEGAL ANALYSIS**

12 **A. Standard for Summary Judgment**

13 "A trial court *must* grant a motion for summary judgment 'if all the papers
14 submitted show that there is no triable issue as to any material fact and that the moving
15 party is entitled to a judgment as a matter of law.'" (*In re Automobile Antitrust Cases I*
16 *and II* (2016) 1 Cal.App.5th 127 at p. 150, emphasis added, citing Code Civ. Proc., §
17 437c, subd. (c)).

18 "A party may move for summary adjudication as to one or more causes of action
19 within an action ... [a] motion for summary adjudication may be made my itself ... and
20 shall proceed in all procedural respects as a motion for summary judgment." (Code
21 Civ. Proc., § 437f, subds. (1),(2)).

22 "In moving for summary judgment, a 'plaintiff ... has met' his 'burden of showing
23 that there is no defense to a cause of action if' he 'has proved each element of the
24 cause of action entitling' him 'to judgment on that cause of action. (*Aguilar v. Atlantic*
25 *Richfield Co.* (2001) 25 Cal.4th 826 ("*Aguilar*") at p. 849, citing Code Civ. Proc., § 437c,
26 subd. (p)(1)).

27 Once the plaintiff has met his burden, the burden shifts to the defendant to show
28 that a triable issue of one or more material facts exists as to that cause of action or a

1 defense thereto. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th 826 at p. 849) The
2 defendant may not rely upon the mere allegations or denials of his pleadings to show
3 that a triable issue of material facts exists but instead must set forth the specific facts
4 showing that a triable issue of material fact exists as to that cause of action or a
5 defense thereto. (*Ibid*).

6 Here there are no triable issues of material fact as to Plaintiff's cause of action,
7 nor to Defendant's affirmative defense of Civil Code section 1007. Plaintiff is entitled to
8 judgment as a matter of law.

9 **B. Plaintiff is Entitled to a Prescriptive Easement over the PG&E**
10 **Property**

11 Plaintiff is entitled to a prescriptive easement over the Easement Area portion of
12 the PG&E Property. Plaintiff has evinced all of the necessary elements for a claim for
13 prescription - continuous, open and notorious use, for a period of over five years, under
14 claim of right. The fact of Plaintiff's use is not disputed. Therefore Plaintiff is entitled to
15 a prescriptive easement over the PG&E property.

16 "To acquire an easement by prescription one must prove actual, open, notorious,
17 continuous and peaceable use for the statutory period" (*Sylva v. Kuck* (1966) 240
18 Cal.App.2d 127 at p. 133 - [finding all elements of prescription for roadway used by
19 neighbor]. *See also Zunino v. Gabriel* (1960) 182 C.A.2d 613 [finding prescriptive right
20 to use of road for purposes of traversing neighboring property]; *Zimmer v. Dykstra*
21 (1974) 39 C.A.3d 422 [finding all elements - granting prescriptive right to use
22 nondedicated alley]; *Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587 [finding
23 all elements - granting prescriptive right to use of roadway]).

24 "[T]he two broad elements required to create a prescriptive easement are (1) an
25 adverse use for (2) the five-year prescriptive period. [Civ.Code, § 1007; Code Civ.Proc.,
26 § 321.]" (*Zimmer v. Dykstra*, *supra*, 39 C.A.3d 422 at p.428).

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1 i. **Plaintiff Used the PG&E Property Continuously, for Over Five**
2 **Years**

3 Plaintiff used the Easement Area of the PG&E Property continuously for over five
4 years. Therefore Plaintiff meets this requirement for establishing a prescriptive right.

5 'A use may be continuous (emphasis added) though there are periods of time
6 more or less extended between the specific acts of use. Many easements, such as
7 rights of way and rights of hunting or fishing, which are periodical or only occasional in
8 use may be acquired by prescription. The requirement means that there be no break in
9 the essential attitude of mind required for adverse use rather than that the use be
10 constant.' (*Zimmer v. Dykstra*, *supra*, 39 Cal.App.3d 422 at p. 432; *See also Weideman*
11 *v. Staheli* (1948) 88 Cal.App.2d 613 [occasional use sufficient to qualify as
12 "continuous"]; *Harrison v. Bouris* (1956) 139 Cal.App.2d 170 [use of road no less than
13 10 times per year qualifies as "continuous"]).

14 Here, Plaintiff used the PG&E property from approximately 2004, when he
15 moved into the property, through 2011 when he leased it, and even afterwards, as he
16 would continue to store goods in the back yard of the property and continue to access
17 said storage via the Easement Area. Further, Plaintiff's agents (his rental tenants) also
18 continued to use the Easement Area for the same purposes; storage, parking, ingress
19 and egress. Neighborhood children continued to play in the tree house and on the tire
20 swing. The photographic evidence is replete with photos of the Easement Area in use
21 by neighbors to the PG&E Property. There was never a "break in the essential attitude
22 of mind" regarding Plaintiff or his agents' use of the Easement Area. Even when
23 challenged by representatives of PG&E, Plaintiff continued to make use of the
24 Easement Area. Plaintiff's use from 2004 through 2011 qualifies for prescriptive rights.
25 Plaintiff's use after renting the Property from 2011 through 2018 qualifies as well. Use
26 of the Easement Area by Plaintiff's tenants further qualifies. There is no meaningful
27 dispute as to Plaintiff's continuous use of the Easement Area for over five years.
28

1 Based on the foregoing, Plaintiff has made continuous use of the Easement
2 Area for a period in excess of five years. Therefore he is entitled to prescriptive
3 easement over the Easement Area.

4 **ii. Plaintiff's use of the PG&E Property has been open and**
5 **notorious**

6 Plaintiff's use of the PG&E Property was open and notorious. Therefore Plaintiff
7 meets this requirement for establishing a prescriptive right.

8 Use of property is "open and notorious" when it provides actual or constructive
9 notice to the owner that the property is being used. (*Connolly v. McDermott* (1984) 162
10 Cal.App.3d 973 at p. 977 - [upholding prescriptive claim over mountain road]; See also
11 *Hails v. Martz* (1946) 28 Cal.2d 775 - [reversing the denial of a prescription claim for
12 diversion of water over Defendant's property]).

13 Here, the use by Plaintiff was clear for all to see. It is not disputed that Plaintiff,
14 his agents, as well as other locals used the Easement Area on a regular basis. The
15 record is replete with photographs of the Easement Area containing vehicles belonging
16 to various private parties, as well as other items of a personal nature being stored on
17 the Easement Area, as well as an established tree house and tire swing, visible to all.
18 Plaintiff has provided three witness declarations speaking to the regularity of his use. It
19 was for common, everyday purposes and in no way hidden from Defendant. This is
20 open and notorious use, qualifying for prescriptive rights.

21 Based on the foregoing, Plaintiff's use of the Easement Area was open and
22 notorious and qualifies for prescriptive rights.

23 **iii. Plaintiff's Use of the Easement Area Was Hostile and Under**
24 **Claim of Right.**

25 Plaintiff's use of the Easement Area was hostile and under claim of right.
26 Therefore Plaintiff meets this requirement for establishing a prescriptive right.

27 "Claim of right does not require belief or claim that use is legally justified, but
28 rather it requires property to be used without permission of landowner." (*Felgenhauer v.*

1 Soni (2004) 121 C.A. 4th 445 at p. 450 - [upholding prescriptive claim without claimant
2 belief that use was legally justified]]. "Hostile means adverse to the interests of the
3 landowner." (*Aaron v. Dunham* (2006) 137 Cal.App.4th 1244 at p. 1249 - [affirming
4 prescriptive claim where no permission by landowner was given for use]).

5 Here, the undisputed material facts establish that PG&E never gave permission
6 for Plaintiff to use the property. In fact, PG&E instructed Plaintiff on multiple occasions
7 to cease from using the property. Further, PG&E maintained a "Public Parking
8 Prohibited" sign at the front of the property, seeking to prevent members of the public
9 from using the Easement Area (which they did anyway). By the same token, Plaintiff's
10 use of the Easement Area was hostile. PG&E was the landowner and could have
11 maintained a trespass action against Plaintiff based on his undisputed use of the
12 property. Therefore the undisputed material facts establish that Plaintiff's use of the
13 PG&E property was hostile, and under claim of right.

14 Based on the foregoing, Plaintiff has demonstrated that he is entitled to a
15 prescriptive easement over the Easement Area. He has made continuous, open and
16 notorious, hostile use under claim of right to the Easement Area for over five years.
17 The material facts establish this use and are not in dispute. Therefore the Court should
18 grant Summary Judgment in favor of Plaintiff and enjoin Defendant from fencing off the
19 Easement Area.

20 **C. Because PG&E Has Not Dedicated the Easement Area to a Public**
21 **Use, Civil Code Section 1007 Does Not Apply.**

22 Defendants have raised California Civil Code section 1007 as an affirmative
23 defense to Plaintiff's claims herein. Civil Code 1007 states that prescriptive rights do
24 not accumulate against property which is dedicated to a public use by a public utility. In
25 this case, there is no evidence that the Easement Area has been dedicated to any use
26 whatsoever, let alone a public use. Therefore Civil Code section 1007 does not apply
27 and the court should rule for Plaintiff.

28 ///

1 "Occupancy for the period prescribed by the Code of Civil Procedure as sufficient
2 to bar any action for the recovery of the property confers a title thereto, denominated a
3 title by prescription, which is sufficient against all, but no possession by any person, firm
4 or corporation no matter how long continued of any land, water, water right, easement,
5 or other property whatsoever *dedicated to a public use by a public utility*, or dedicated
6 to or owned by the state or any public entity, shall ever ripen into any title, interest or
7 right against the owner thereof." (Civil Code § 1007, *emphasis added*).

8 **i. The Easement Area is Not Dedicated to a Public Use**

9 PG&E's anticipated defense is the Easement Area is immune from prescription
10 claims under Civil Code section 1007. However, in order for this statute to apply, it
11 requires that the Easement Area be dedicated to a public use. There is absolutely no
12 evidence that the Easement Area has been dedicated to a public use.

13 "Under the common law, a dedication may be made either expressly or by
14 implication." (*Scher v. Burke* (2017) 3 Cal.5th 136 at p. 141). There is neither explicit
15 nor implicit dedication in this case.

16 **a. The Easement Area is Not Explicitly Dedicated to a**
17 **Public Use**

18 There is no evidence that the Easement Area was explicitly dedicated to a public
19 use.

20 Explicit dedication "requires an intent on the part of the owner to dedicate and
21 acceptance by the public". (*Palos Verdes Corp. v. Housing Authority* (1962) 202 C.A.2d
22 827 - [finding no dedication where deed did not unequivocally voice intent to dedicate]).

23 "Dedication has been described as 'a voluntary transfer of an interest in land
24 (which) partakes both of a nature of a grant and of gift, and is governed by the
25 fundamental principles which control, such transactions.'" (*Union Trans. Co. v.*
26 *Sacramento* (1954) 42 C.2d 235 at p. 240 - [finding no dedication of a bridge to a
27 County body without formal necessities]). "Essential to such a dedication are an offer by
28 the owner of the land, clearly and unequivocally indicated by his words or acts, to

1 dedicate the land to a public use and an acceptance by the public of the offer". (*Id.* at p.
2 240).

3 Here, there is no evidence whatsoever of dedication. In responses to written
4 discovery, Defendant produced only the 1952 Grant Deed as a document which
5 supports their contention that the property is dedicated to a public use. The 1952 Grant
6 Deed conveys the PG&E Property, from private party Cecil and Alice Searle to Coast
7 Counties Gas and Electric Company, a predecessor entity of PG&E. This deed contains
8 no mention of any dedication whatsoever. The record does not contain any other
9 dedication deed or instrument of any kind. There is no public recognition of such a
10 document. There is no dedication in this case.

11 **b. The Easement Area is Not Implicitly Dedicated to a**
12 **Public Use**

13 There is no evidence of implied dedication.

14 "In order to constitute such dedication, or such abandonment, by the owner, his
15 intention to that effect must appear. Such intent need not be manifested by any
16 contract, writing, or express declaration of the owner. *It may be implied from his*
17 *conduct.*" (*People v. Sayig* (1951) 101 Cal.App.2d 890 at p. 896, *emphasis added*).

18 "Whether a dedication of land...has occurred in any instance is a conclusion of
19 fact to be drawn from the circumstances of the particular case; that *such circumstances*
20 *must clearly show an unequivocal intention*, manifested by appropriate words or
21 conduct, or both, on the part of the owner, to devote his land to the wayfaring uses of
22 that somewhat vague entity called "the public." (*Ibid.*, at pp. 896-897).

23 "Litigants seeking to establish dedication to the public must show that various
24 groups of persons have used the land for if only a limited and definable number of
25 persons have used the land, those persons may be able to claim a personal easement
26 but not dedication to the public." (*Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29 at p.
27 39).

28 ///

1 *Gion v City of Santa Cruz, supra*, was superceded by the passing of Civil Code
2 section 1009 in 1972. Indeed, Civil Code section 1009 substantially limits what can
3 qualify as public dedication:

4 *"(b) Regardless of whether or not a private owner of real*
5 *property has recorded a notice of consent to use of any particular*
6 *property ... no use of such property by the public after the effective*
7 *date of this section shall ever ripen to confer upon the public or any*
8 *governmental body or unit a vested right to continue to make such*
9 *use permanently, in the absence of an express written irrevocable*
10 *offer of dedication of such property to such use"*

11 (Civil Code § 1009).

12 Here, there is no evidence of implied intent to dedicate the Easement Area to a
13 public use. PG&E has only used the western half of the PG&E Property as an electrical
14 substation. This is a walled off and fenced off portion of the property which is not
15 accessible to the public at all. As to the Easement Area portion of the property, to the
16 extent that PG&E has considered it whatsoever, it has been to keep the public out, not
17 to dedicate it to a public use. PG&E has maintained a "NO PUBLIC PARKING" sign on
18 the Easement Area for many years, and PG&E representative instructed Plaintiff to stop
19 using the Easement Area on several occasions. PG&E allowed the Easement Area to
20 become overgrown and untended, even claiming that they were only obligated to
21 maintain "four feet" around the edge of the substation.

22 PG&E has nullified any claim that they have dedicated the Easement Area to
23 public use by their latest action - fencing the area off to the public. It is directly
24 contradictory to the notion of public use that PG&E now excludes the public from using
25 the Easement Area.

26 Therefore it is beyond question that the Easement Area is not dedicated to a
27 public use.

28 ///

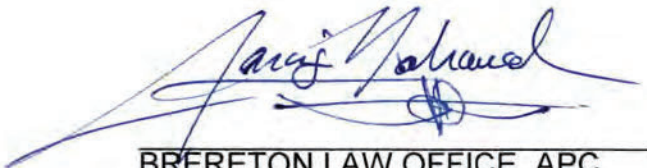
1 **IV. CONCLUSION**

2 The court should grant Summary Judgment in favor of Plaintiff and against
3 Defendant. There are no material facts in dispute. The undisputed material facts
4 establish that Plaintiff has used the Easement Area continuously for over five years, in
5 an open and notorious way, under claim of right. Therefore Plaintiff is entitled to a
6 prescriptive easement over the Easement Area. Further, the undisputed material facts
7 establish that Defendant did not dedicate the Easement Area to a public use, either
8 explicitly or implicitly. Therefore Civil Code section 1007 does not apply.

9 For the foregoing reasons, the court should grant Summary Judgment in favor of
10 Plaintiff and against Defendant.

11
12
13 Respectfully Submitted,

14
15 Date: 1-11-19

16 

17 BRERETON LAW OFFICE, APC
18 By: Aaron J. Mohamed
19 Attorney for Plaintiff Charles Maier
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26
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28

1 BRAD C. BRERETON (SBN 111266)
2 AARON J. MOHAMED (SBN 245915)
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8 ajm@brereton.law

9 Attorney for Plaintiff
10 CHARLES MAIER

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County of Santa Cruz
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Alex Calvo, Clerk
By: Helena Hanson, Deputy

Helena J. Hanson

11 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SANTA CRUZ
13 UNLIMITED JURISDICTION

14 CHARLES MAIER, an individual,
15 Plaintiff.

16 v.

17 PACIFIC GAS AND ELECTRIC
18 COMPANY, a California Corporation, and
19 DOES 1-50,
20 Defendants.

CASE NO. 18CV01718

21 **PLAINTIFF CHARLES MAIER'S
22 SEPARATE STATEMENT OF
23 MATERIAL FACTS IN SUPPORT OF
24 MOTION FOR SUMMARY JUDGMENT
25 OR IN THE ALTERNATIVE SUMMARY
26 ADJUDICATION**

27 Date: March 28, 2019
28 Time: 8:30 am
Dept: 5

Respectfully submitted,

Aaron J. Mohamed

BRERETON LAW OFFICE, APC
By: Aaron J. Mohamed
Attorney for Plaintiff Charles Maier

Date: 1-11-19

1 **UNDISPUTED MATERIAL FACTS SUPPORTING SUMMARY JUDGMENT OR IN THE**
2 **ALTERNATIVE SUMMARY ADJUDICATION**

3 **Moving Party's Undisputed Material**
4 **Facts and Supporting Evidence**

5 **Opposing Party's Response and**
6 **Supporting Evidence**

7 8 9 10 11 12 13 14 15 16	1. Plaintiff Charles Maier is holder of record title to the property commonly known as 2521 7 th Ave., Santa Cruz, California 95062 (the "Maier Property"). Plaintiff has owned the Maier Property since 2004. (Declaration of Charles Maier ¶12).	
17 18 19 20 21 22 23 24 25 26 27 28	2. Defendant Pacific Gas and Electric Company is the holder of record title to property directly west of and bordering the Maier Property with Assessor's Parcel Number (the "PG&E Property"). (Defendant PG&E's Responses to Form Interrogatories, Set One, Page 4, Lines 22-24 [Exhibit A to Declaration of Aaron Mohamed]).	
	3. In 1952, Cecil and Alice Searle granted the PG&E Property to Coast Counties Gas and Electric Company, a predecessor entity to PG&E. (Defendant PG&E's Responses to Form Interrogatories, Set One, Page 4, Lines 22-24).	
	4. The PG&E Property contains an electrical substation (the "Arana Substation") on the western half of the PG&E Property. (Deposition of Defendant's Person Most Knowledgeable Page 17 [Exhibit C to Declaration of Aaron Mohamed], Declaration of Charles Maier, Exhibit A).	

1 5. The eastern half of the PG&E Property
2 is undeveloped and contains at least two
3 trees (the "Easement Area"). It contains
4 no PG&E property or electrical equipment.
5 This portion of the PG&E Property shares
6 it's east/west border with the Maier
7 property.

8 (Deposition of Defendant's Person Most
9 Knowledgeable, Page 17, Declaration of
10 Charles Maier, Exhibit A).

11 6. Since at least 2004, the electrical
12 substation portion of the PG&E Property
13 has been enclosed on all sides.

14 (Deposition of Defendant's Person Most
15 Knowledgeable, Page 17, Declaration of
16 Charles Maier, Exhibit A).

17 7. Until approximately March 2018, the
18 Easement Area was unfenced and
19 accessible directly from Bostwick Ave.

20 (Deposition of Defendant's Person Most
21 Knowledgeable, Page 17, Declaration of
22 Charles Maier, ¶¶ 8,9,14, Exhibit A)

23 8. Since at least 2004, PG&E maintained
24 a sign on the Easement Area, which
25 stated "PUBLIC PARKING PROHIBITED."

26 (Declaration of Charles Maier, ¶ 11,
27 Exhibit A, Declaration of Nathan Carroll ¶
28 8)

9. For many years, the Easement Area
contained a tree-house, a tire-swing, and
periodically other play equipment.

(Declaration of Scott Vitali, ¶ 7,
Declaration of Nathan Carroll, ¶ 4,
Declaration of Charles Maier Exhibit A)

1 10. When Plaintiff purchased the Maier
2 Property in 2004, the Easement Area was
3 overgrown and not in use. Defendant only
4 maintained four feet around the walls of
5 the substation. Plaintiff spent time clearing
6 and maintaining the Easement Area so
7 that he could use it for ingress, egress,
8 and parking.

9
10
11 (Declaration of Charles Maier, ¶ 8
12 Declaration of Scott Vitali, ¶ 5-6).

13 11. Since at least 2004, local individuals
14 would used the Easement Area for
15 parking, ingress and egress, and other
16 uses.

17 (Declaration of Charles Maier ¶s 9-10,
18 Exhibit A, Declaration of Nathan Carroll ¶
19 4, Declaration of Scott Vitali, ¶ 6).

20 12. Since at least 2004, Plaintiff Charles
21 Maier regularly used the Easement Area
22 for parking, ingress and egress, and other
23 uses.

24 (Declaration of Charles Maier ¶s 9-10,
25 Exhibit A, Declaration of Nathan Carroll ¶
26 4, Declaration of Scott Vitali, ¶ 6).

27 13. Defendant PG&E never gave Plaintiff
28 Charles Maier permission to use the
Easement Area for any purpose.

(Declaration of Charles Maier, ¶ 3,
Declaration of Nathan Carroll, ¶ 8
Deposition of Defendant's Person Most
Knowledgeable, Page 36).

1	14. On multiple occasions, Defendant's	
2	employee Dennis Ben instructed Plaintiff	
3	Charles Maier not to make use of the	
4	Easement Area.	
	(Declaration of Charles Maier, ¶ 3).	
5	15. Plaintiff Charles Maier lived at the	
6	Maier Property until around 2011,	
7	whereupon he moved to another home	
8	and began renting the Maier Property to	
9	third parties.	
	(Declaration of Charles Maier, ¶ 9)	
10	16. Even after renting the Maier Property	
11	to third parties, Plaintiff continued to use	
12	the Easement Area as he had in the past.	
13	(Declaration of Charles Maier, ¶ 10,	
	Declaration of Nathan Carroll, ¶ 7).	
14	17. Plaintiff's rental tenants also	
15	continued to use the Easement Area for	
16	ingress, egress, and parking purposes.	
17	(Declaration of Charles Maier, ¶ 10,	
	Declaration of Nathan Carroll, ¶ 7).	
18	18. In or around 2016, a neighbor	
19	complaint to Defendant PG&E about use	
20	of the Easement Area by local parties.	
21	(Declaration of Charles Maier, ¶ 12,	
22	Deposition of Defendant's Person Most	
23	Knowledgeable [Daniel Waters] Pages 25-	
	26)	
24	19. After receiving the neighbor	
25	complaints, PG&E representative Alex	
26	Soria informed Plaintiff Charles Maier that	
27	PG&E intended to fence off the Easement	
28	Area.	
	(Declaration of Charles Maier, ¶ 12)	

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<p>20. Plaintiff told Mr. Soria that he would like continued access to the Easement Area. Mr. Soria informed Mr. Maier that he believed Mr. Maier would be allowed to lease the property from PG&E, and advised that Mr. Maier fill out a "request to use PG&E Property" form</p> <p>(Declaration of Charles Maier, ¶ 13, Exhibit B).</p>	
<p>21. Mr. Soria later informed Plaintiff that PG&E had determined not to lease the property to him, and was proceeding with fencing off the property. PG&E ultimately fenced off the property in around May, 2018.</p> <p>(Declaration of Charles Maier, ¶ 14, Exhibit A).</p>	

1 BRAD C. BRERETON (SBN 111266)
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9 Attorney for Plaintiff
10 CHARLES MAIER

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By: Helena Hanson, Deputy

Helena J. Hanson

11 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SANTA CRUZ
13 UNLIMITED JURISDICTION

14 CHARLES MAIER, an individual,
15 Plaintiff.
16 v.
17 PACIFIC GAS AND ELECTRIC
18 COMPANY, a California Corporation, and
19 DOES 1-50,
20 Defendants.

CASE NO.

**DECLARATION OF AARON
MOHAMED IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Date: March 28, 2019
Time: 8:30 am
Dept: 5

21 I, Aaron J. Mohamed, hereby declare as follows:

22 1. I am counsel for Plaintiff Charles Maier in this action. I have personal
23 knowledge of the matters set forth in this declaration. As to those matters stated on
24 information and belief I am informed and believe them to be true. If called to testify
25 regarding these matters, I could do so competently.

26 2. On October 31, 2018, Defendant PG&E served responses to Plaintiff's
27 First Set Form Interrogatories. A true and correct copy of a portion of those responses
28 is attached hereto as Exhibit A.

///

1 3. On December 4, 2018 Plaintiff noticed the deposition of Defendant
2 PG&E's Person Most Knowledgeable. A true and correct copy of that Notice of
3 Deposition is attached hereto as Exhibit B.

4 4. On December 20, 2018, Plaintiff Charles Maier took the deposition of
5 Defendant PG&E's Person Most Knowledgeable. PG&E designated Mr. Daniel Waters
6 as the person most knowledgeable to give testimony about the subject(s) identified in
7 the Notice of Deposition. Attached hereto as Exhibit C are true and correct copies of
8 portions of the transcript of Mr. Waters' deposition.

9 I declare under penalty of perjury under the Laws of the State of California that
10 the foregoing is true and correct.

11
12 Date: 1-11-19

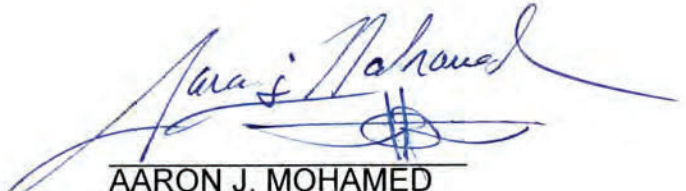

AARON J. MOHAMED

EXHIBIT A

PACIFIC GAS AND ELECTRIC COMPANY
BARBARA J. DAMLOS (SBN 118201)
77 Beale Street, B30A
P.O. Box 7442
San Francisco, CA 94105

DIRECT CORRESPONDENCE TO:

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Attorneys for Defendant
PACIFIC GAS AND ELECTRIC COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

CHARLES MAIER, an individual

Plaintiffs,

v.

PACIFIC GAS AND ELECTRIC COMPANY,
a California Corporation, and DOES 1 through
50,

Defendants.

Case No. 18CV01718

**DEFENDANT PACIFIC GAS AND
ELECTRIC COMPANY'S AMENDED
RESPONSES TO PLAINTIFF CHARLES
MAIER'S FORM INTERROGATORIES,
SET ONE**

Complaint Filed: June 18, 2018
Trial Date: Not Set

REQUESTING PARTY: Plaintiff, CHARLES MAIER

RESPONDING PARTY: Defendant, PACIFIC GAS AND ELECTRIC COMPANY

SET NUMBER: ONE

1 request on the grounds that the information is equally available to Plaintiff.

2 PG&E responds that Plaintiff's claim of prescription is barred by statute. PG&E's
3 predecessor in interest, Coast Counties Gas and Electric, acquired the PG&E Arana
4 Substation property (APN 026-022-005) in 1952. At all times since 1952, all portions
5 of the Arana Substation property have been used for PG&E's electric operations.
6 PG&E's operations precede any alleged use of the property by Plaintiff. Under Civil
7 Code section 1007, PG&E's use of the Arana Substation property to distribute
8 electricity to the public constitutes dedication to a public use by a public utility. Any
9 alleged use of the property by Plaintiff for ingress or egress, no matter how long
10 continued, will never ripen into a prescriptive easement on the Arana Substation
11 property.

12 (c) Alex Soria, Grant Guerra, Dennis Ben, Daniel Waters, Dave Alonso and Tom
13 McCullough. PG&E employees may only be contacted through counsel for PG&E.

14 (d) Pursuant to Code of Civil Procedure section 2030.230, PG&E refers Plaintiff to
15 documents produced herewith in response to Plaintiff's Requests for Production of
16 Documents, Set One, specifically PG&E0001-0009 and. PG&E0015-16.

17
18 (a) 4

19 (b) PG&E objects to this request on the grounds that it is vague, ambiguous, and
20 overbroad. PG&E objects to the term "EASEMENT AREA" on the grounds that no
21 easement exists on the PG&E Arana Substation property. PG&E responds that
22 Plaintiff's claim of prescription is barred by statute. PG&E's predecessor in interest,
23 Coast Counties Gas and Electric, acquired the PG&E Arana Substation property
24 (APN 026-022-005) in 1952. At all times since 1952, all portions of the Arana
25 Substation property have been used for PG&E's electric operations. PG&E's
26 operations precede any alleged use of the property by Plaintiff. Under Civil Code
27 section 1007, PG&E's use of the Arana Substation property to distribute electricity to
28 the public constitutes dedication to a public use by a public utility. Any alleged open

1 *Charles Maier v. Pacific Gas and Electric Company*
2 Santa Cruz Superior Court, Case No. 18CV01718

3 **VERIFICATION**

4 I, the undersigned, say:

5 I am an officer, to wit, Assistant Corporate Secretary of PACIFIC GAS AND
6 ELECTRIC COMPANY, a corporation, and am authorized, pursuant to Code of Civil Procedure
7 Section 446(a), to make this verification for and on behalf of said corporation, and I make this
8 verification for that reason; I have read the foregoing document, **DEFENDANT PACIFIC GAS**
9 **AND ELECTRIC COMPANY'S AMENDED RESPONSES TO PLAINTIFF CHARLES**
10 **MAIER'S FORM INTERROGATORIES, SET ONE**, and I am informed and believe the
11 matters therein are true and on that ground I allege that the matters stated therein are true.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed on October 31, 2018, at San Francisco, California.

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VERIFICATION

EXHIBIT B

BRAD C. BRERETON (SBN 111266)
AARON J. MOHAMED (SBN 245915)
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Fax: (831)459-8298
ajm@brereton.law

Attorneys for Plaintiff
CHARLES MAIER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ
UNLIMITED JURISDICTION

CHARLES MAIER,

Plaintiff,

vs.

PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation; and
DOES 1 to 50, inclusive;

Defendants.

CASE NO. 18CV01718

**AMENDED NOTICE OF DEPOSITION
OF PERSON MOST
KNOWLEDGEABLE**

PLEASE TAKE NOTICE that Plaintiff Charles Maier will take the deposition upon oral examination of the Person(s) Most Knowledgeable of Defendant Pacific Gas and Electric Company on December 20, 2018 at 9:30am before a certified court reporter in and for the State of California, at the office of Uccelli & Associates, 1243 Mission Rd., South San Francisco, CA 94080. Said deposition shall continue from day to day, excluding Sundays and holidays, until completed.

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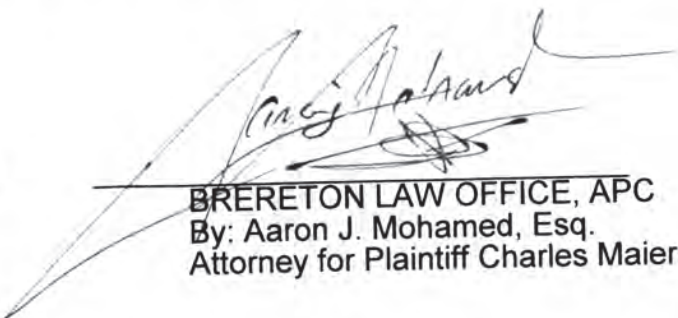
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1 The deponent is not a natural person. The deponent is obligated to designate
2 and produce the officers and employees most knowledgeable about the subject
3 matters set forth in "**Exhibit A**" attached hereto.
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7 Dated: December 4, 2018



BRERETON LAW OFFICE, APC
By: Aaron J. Mohamed, Esq.
Attorney for Plaintiff Charles Maier

1 **EXHIBIT A to NOTICE OF DEPOSITION of PERSON MOST KNOWLEDGEABLE**

2 As used herein, the "PG&E PROPERTY" shall be construed to mean the parcel
3 of real property within the County of Santa Cruz, located on Bostwick Lane, Santa
4 Cruz, CA 95062 with Assessor's Parcel Number 026-022-05.
5

6 As used herein, the "EASEMENT AREA" shall be construed to mean the
7 easterly portion of the PG&E PROPERTY, which is the subject of this lawsuit.

8 The deponents shall be the person(s) most knowledgeable and most qualified
9 to give testimony as to the use and maintenance of the EASEMENT AREA between
10 the years 2004 and the present day.
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3 **PROOF OF SERVICE BY U.S. MAIL**

4 I, the undersigned, declare:

5 I am now and at all times herein mentioned have been over the age of eighteen
6 years, a resident of and employed in the County of Santa Cruz, California, and not a
7 party of the within entitled action or cause. My business address is **BRERETON LAW**
8 **OFFICE, 1362 Pacific Avenue, Suite 221, Santa Cruz, California 95060.**

9 On December 4, 2018, I served a true copy of the foregoing:

10 **AMENDED NOTICE OF DEPOSITION OF PERSON MOST KNOWLEDGEABLE**

11 by placing said copy in the United States mail with postage prepaid and addressed as
12 follows:

13 Gayle Gough, Esq.
14 Gough & Hancock LLP
15 Two Embarcadero Center, Suite 640
San Francisco, CA 94111

16 X (By U.S. Mail) I am readily familiar with this office's business practice for
17 collection and processing of correspondence for mailing with the United States
18 Postal Service and that this document with postage fully prepaid will be
deposited with the United States Postal Service this date in the ordinary course
of business.

19 I declare under penalty of perjury under the laws of the State of California that
20 the foregoing is true and correct.

21
22 Dated: December 4, 2018

23 
24 Nathania Ramirez
25
26
27
28

EXHIBIT C

1 visit personally the parcel we have here?

2 A. Yes, I did.

3 Q. Did you notice a portion of land adjacent to
4 the fenced-off substation that was undeveloped?

5 MS. GOUGH: Vague.

6 THE WITNESS: At that time in my career I
7 don't think I noticed which parts of the substation
8 were developed or un. The purpose of my visit was to
9 go into the fenced area and look at equipment.

10 MR. MOHAMED: Q. So your testimony is that
11 there was a fenced area and that enclosed electrical
12 equipment?

13 A. Yes, sir.

14 Q. It is bordered on two sides by Bostwick Lane,
15 correct?

16 A. Correct.

17 Q. Then to the east of the fenced-in area, there
18 is a portion that is undeveloped with trees. Are you
19 aware of that portion?

20 A. Yes, I am aware of that portion.

21 Q. In 2010 when you first became aware of the
22 substation, were you aware that that portion of
23 property was also owned by PG&E?

24 A. I don't recall if that was part of what I was
25 being taught about the substation or not.

1 Q. What's Dennis Ben's position with PG&E?

2 A. I am under the impression that Dennis Ben has
3 recently retired.

4 Q. Okay.

5 A. Before his retirement he was a land planner, I
6 believe is the title.

7 Q. Do you know what department that's in?

8 A. The name is very likely land planning.

9 Q. Land planning, okay. Is it your understanding
10 that Alex Soria is also in the land planning
11 department?

12 A. That is my understanding.

13 Q. Do you ever speak to Alex Soria about this
14 matter?

15 A. I do on occasion.

16 Q. About -- okay. All right.

17 When was the first time you spoke with him
18 about it?

19 A. I would place that in the year 2016.

20 Q. Please describe the content of that
21 conversation.

22 A. I was seeking his professional assistance for
23 the land ownership for the substation.

24 Q. How did it come up that you reached out to
25 him?

1 A. I was asked to help with a problem that was
2 brought up by the neighbors, which was trespassing on
3 the PG&E substation property.

4 MS. GOUGH: Let me just remind you that if
5 there is a discussion with anyone in PG&E's law
6 department, whether it be the lawyer or an investigator
7 for the law department, those are attorney/client
8 privileged communications or potentially work product.

9 THE WITNESS: Understood. Thank you.

10 MR. MOHAMED: Q. Do you know what neighbor
11 made the complaints?

12 A. I don't.

13 Q. What was the nature of the complaints?

14 A. My understanding was the neighbor was
15 complaining about vehicles parking, about property
16 being stored.

17 Q. Do you know who he complained to?

18 A. I don't know that.

19 Q. Do you know if he ever complained to county
20 supervisor John Leopold?

21 A. I don't know.

22 Q. Do you know if John Leopold ever contacted
23 PG&E with regard to this issue?

24 A. I also don't know that.

25 Q. Do you know -- I am sorry. Did I ask if you

1 asked to erect a exclusion fence. It was at that time
2 that I agreed.

3 Q. Did any of the people in this team, in this
4 group ever dispute the fact of the trespass?

5 A. I don't know.

6 Q. Did they ever tell you that they didn't think
7 the trespass was actually going on?

8 A. No, no one told me that.

9 Q. Did they ever tell you why they believed that
10 a fence was necessary?

11 A. The fence was necessary to exclude trespassers
12 and to exclude the litter and other belongings that
13 were being placed on the property.

14 MR. MOHAMED: I think I'll just mark a couple
15 exhibits here. No, I guess -- what did we set up here?
16 We set up some stuff, okay.

17 Can we mark this next in order, please, I
18 believe it's 23.

19 (Deposition Exhibit No. 23 marked.)

20 MR. MOHAMED: Q. We've marked 23. Take a
21 look at these photographs. It's seven photographs. Do
22 you all have seven? I compiled these at the end of the
23 day yesterday, and I hope I counted everything
24 correctly.

25 MS. GOUGH: I actually have eight.

BRAD C. BRERETON (SBN 111266)
AARON J. MOHAMED (SBN 245915)
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Attorney for Plaintiff
CHARLES MAIER

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
1/14/2019 3:57 PM
Alex Calvo, Clerk
By: Helena Hanson, Deputy

Helena J. Hanson

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CRUZ
UNLIMITED JURISDICTION

CHARLES MAIER, an individual,
Plaintiff.

v.

PACIFIC GAS AND ELECTRIC
COMPANY, a California Corporation, and
DOES 1-50,
Defendants.

CASE NO.

**DECLARATION OF CHARLES MAIER
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Date: March 28, 2019
Time: 8:30 am
Dept: 5

I, Charles Maier, hereby declare as follows:

1. I am the Plaintiff in this matter. I have personal knowledge of the information state in this Declaration. As to those facts stated on information and believe I am informed and believe them to be true. If called to testify regarding these matters I could do so competently.

2. I have been the owner of real property located on 7th Avenue in the City of Santa Cruz since 2004. This is the real property with address of 2521 7th Avenue, Santa Cruz, California 95062, and Accessor's Parcel Number 026-022-10 (the "Maier Property")

///

1 3. I am informed and believe that Defendant Pacific Gas and Electric
2 Company ("PG&E") is the current holder of record title to that parcel of real property
3 located on Bostwick Lane, Santa Cruz, California 95062, with Accessor's Parcel
4 Number 026-22-05 (the "PG&E Property").

5 4. The Maier Property and the PG&E Property are situated very close to one
6 another and share a common boundary. The Maier Property is located just around the
7 7th / Bostwick corner from the PG&E Property. The North-East boundary of the PG&E
8 Property touches the South-West boundary of the Maier Property. (See Exhibit A -
9 various photographs of the Easement Area taken from "Google" maps - including
10 photographs evidencing my use of the same).

11 5. Approximately one half of the PG&E Property (the western portion) has
12 been surrounded by walls and fencing for many years. This portion houses an
13 electrical substation known as the Arana Substation. The disputed portion of the PG&E
14 Property is the other half of it - the eastern portion of the PG&E Property (the
15 "Easement Area").

16 6. The Easement Area is undeveloped and contains no electrical equipment
17 or other PG&E property. The Easement Area does contain several large trees but
18 otherwise appears as a vacant lot. This is the lot that I used for many years, for ingress
19 and egress onto my property. PG&E fenced the lot off in 2018 prompting me to file this
20 action.

21 7. The main driveway from my property exits onto a very busy and highly
22 trafficked 7th Ave. There is a large tree situated to the north of my property which
23 partially obscures vision as one is trying to pull out of the driveway.

24 8. When I purchased my property, I noticed that the Easement Area would
25 allow me to access the back-yard of my property, which would be a substantial
26 convenience. I undertook to clear a large amount of overgrowth that had been allowed
27 to establish on the Easement Area.

28 ///

1 9. From 2004 until I began renting the Maier Property to third parties in or
2 around 2011, I regularly used the Easement Area for parking, ingress, and egress to my
3 property. I know that other locals also used the Easement Area for these purposes.

4 10. After I started renting out the Maier Property, I continued to store items in
5 the back-yard of the Maier Property, and continued to use the Easement Area for the
6 same purposes. I am also aware that my rental tenants continued to use the Easement
7 Area for these purposes until it was fenced off in 2018.

8 11. At all times I am aware of, PG&E maintained a sign which stated "PUBLIC
9 PARKING PROHIBITED" on the edge of the Easement Area. Further, I was told
10 multiple times by a PG&E representative named Dennis Ben that I was not able to use
11 the Easement Area, as it belonged to PG&E.

12 12. In or around 2017 PG&E representative Alex Soria informed me that
13 PG&E had received complaints from a neighbor about continued use of the Easement
14 Area. Further, he informed me that due to these complaints, PG&E was considering
15 fencing off the Easement Area.

16 13. I told Mr. Soria that I would like continued access to the Easement Area,
17 so that I could continue the ingress and egress onto my property. Mr. Soria informed
18 me that he believed I would be allowed to lease the property from PG&E, and advised
19 that I fill out a "request to use PG&E Property" form. My letter to Mr. Soria, as well as
20 the request form, are attached hereto as Exhibit B.

21 14. Mr. Soria later informed me that PG&E had determined not to lease the
22 property to me, and was proceeding with fencing off the property. PG&E ultimately
23 fenced off the property in around May, 2018.

24 15. I am not aware of PG&E ever using the Easement Area for any purpose
25 related to the maintenance of their electrical installations to the west of the Easement
26 Area, or for any other purpose.

27 ///

28 ///

1 I declare under penalty of perjury of the laws of the State of California that the
2 foregoing is true and correct.

3
4
5 Date:

1/8/19



CHARLES MAIER

EXHIBIT A





A= Electrical Substation
B= Easement Area
C= Maier Property






Imagery ©2018 Google, Map data ©2018 Google 20 ft

* - Electrical substation

+ - Easement Area



-  - MAIER PROPERTY
-  - PG&E PROPERTY
-  - EASEMENT AREA



Google Maps 640 Bostwick Ln

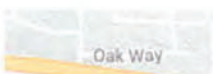


Image capture: Feb 2014 © 2018 Google

Santa Cruz, California

 Google, Inc.

Street View - Feb 2014



Google Maps 630 Bostwick Ln



Image capture: Feb 2014 © 2018 Google

Santa Cruz, California

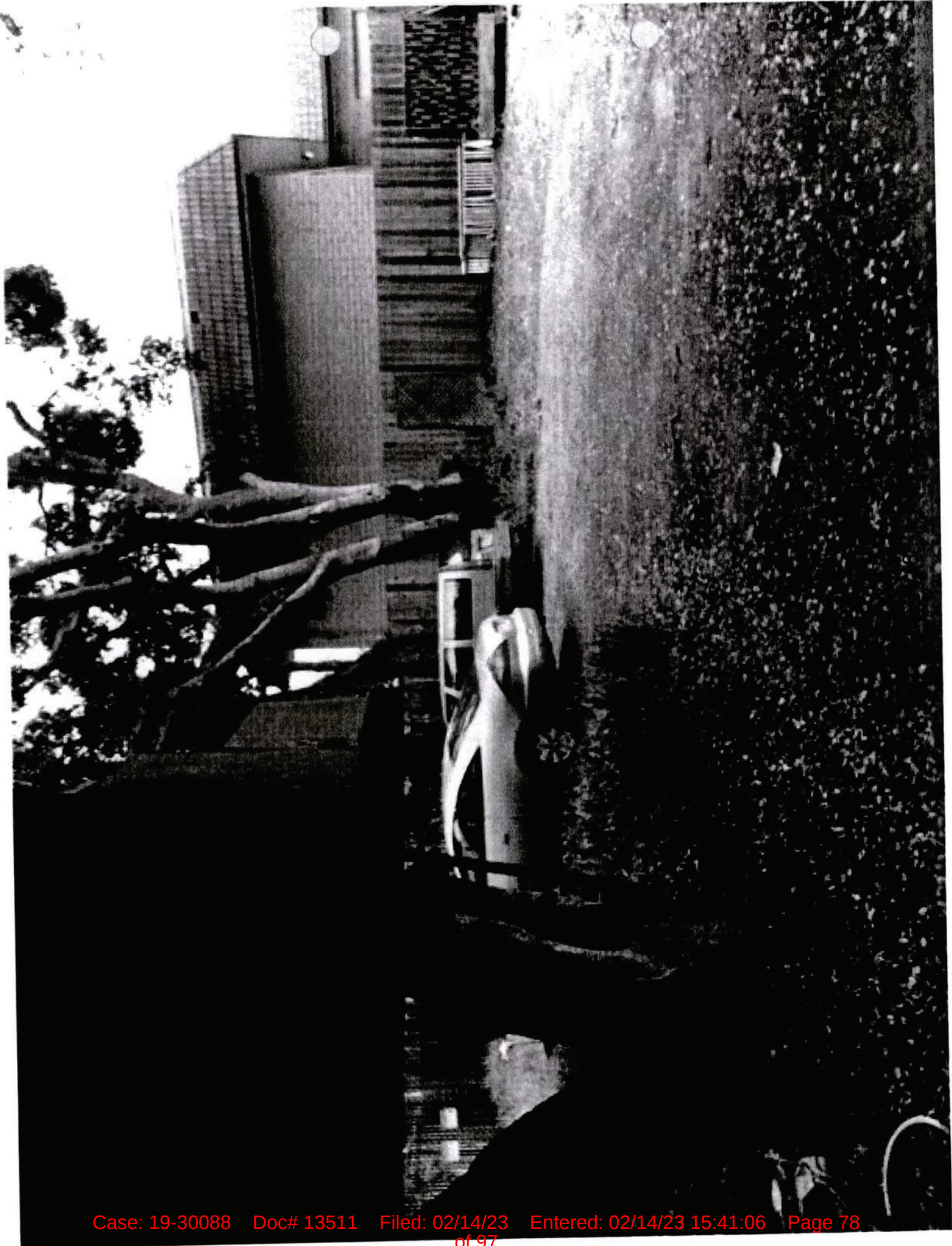
 Google, Inc.

Street View - Feb 2014



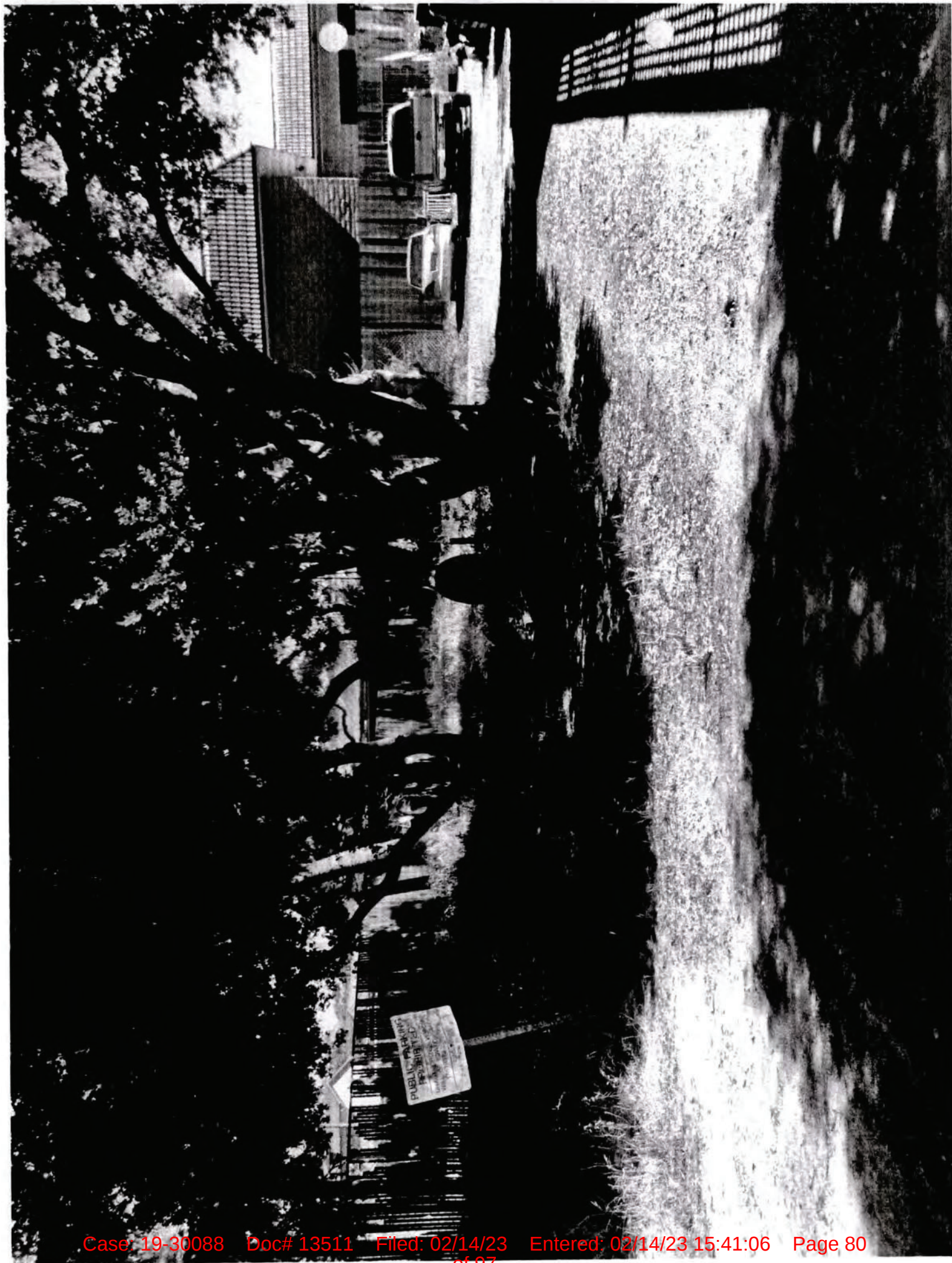


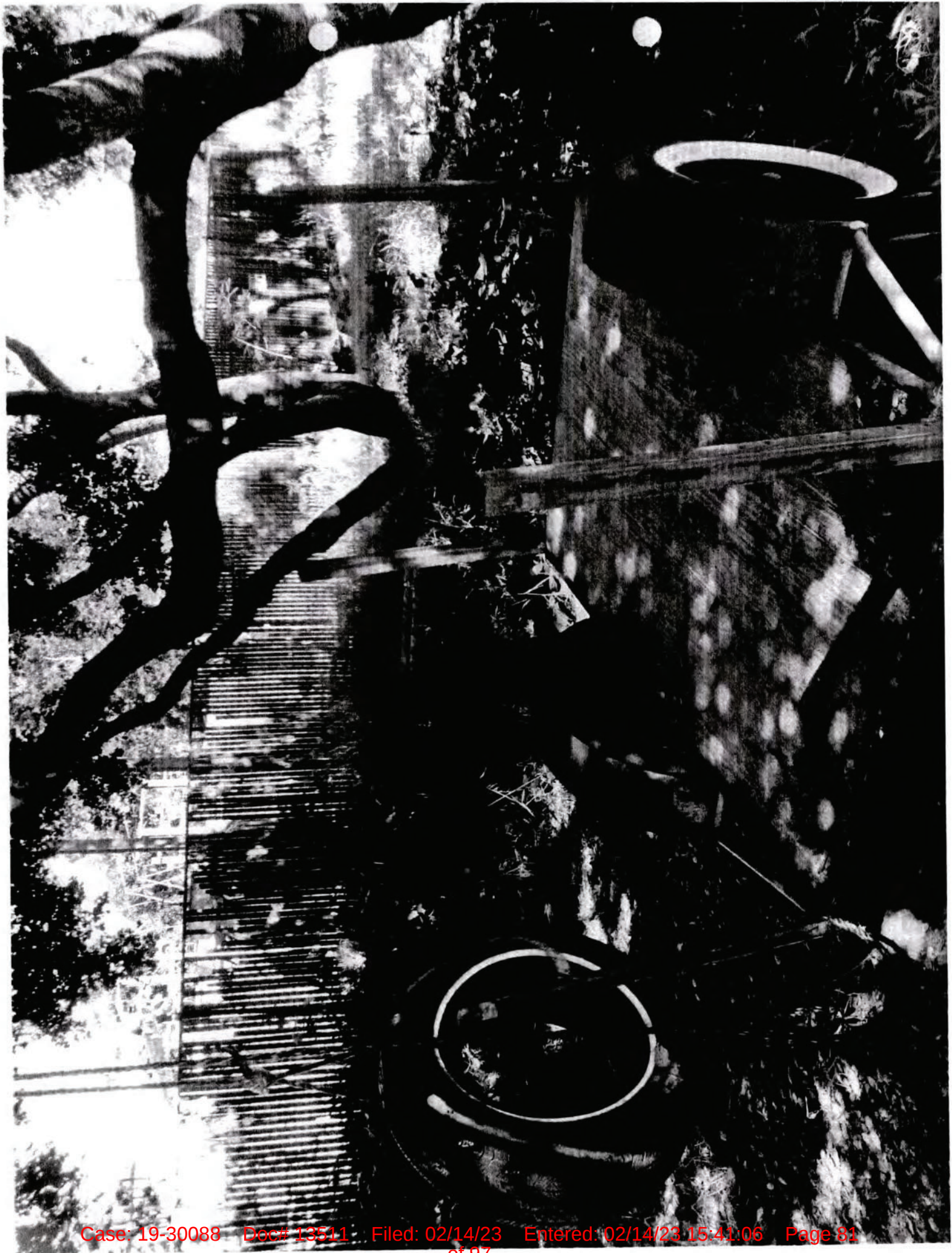
PG&E0017





PG&E0019







PG 30022



EG8F0023

EXHIBIT B

Charles Maier
2521 7th Ave
Santa Cruz
September 27, 2017

Alex Soria
Pacific Gas and Electric
356 E. Alisa street
Salinas, Ca 93091

Dear Alex Soria:

I am writing to request a lease/license for the "Ariana Substation Lot in Bostwick Lane, Santa Cruz county, Parcel ID#818608812. APN#026-022-05". The use would be only to access the Property adjacent to the named lot. I would pay for any extra costs in the fencing that would be required for such request. I would also maintain the lot at my own expense and follow any and all requirements/requests of PG&E.

The positive points for PG&E to allow the use of the land would be as follows:

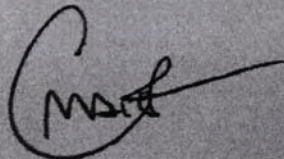
- Collecting revenue on an idle piece of land
- Not having costs associated for any maintenance to the lot
- No worries of homeless people or homeless camps using the lot. Even though its fenced it doesn't stop them, I see lots of homeless camps inside fenced areas all around the county. I think the fence sometimes makes them more comfortable and hidden.
- It would be insured by me releasing PG&E of liability.

I would like to add I have spent uncountable man hours and thousands of dollars keeping the weeds, ivy and trees from taking over the lot over the years. I have also chased countless homeless people and High school kids from spending time there. In closing, I would like to say I am requesting the use for access, as well as, to keep the area behind my home(property) safe and clean. If for some reason the access is not possible I would still like to lease it as open space.

I would like to thank you for your consideration in reviewing this request.

Sincerely,

Charles Maier



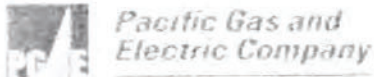
From: Sonia, Alexandro
To: charlez7000@yahoo.com
Subject: 2521 7th Ave Santa Cruz
Attachments: [image002.png](#)
[REQUEST TO USE PGE COMPANY PROPERTY.pdf](#)

Charles,

Attached is the "Request form to use PGE Company Property." Please review and verify that all of your contact information is correct , and get back to me before the end of the week. If you have any questions feel free to give me a call.

Sincerely,

Alex D. Soria
Land Agent
South Coast
(831).784.3309



THIRD PARTY REQUEST TO USE PG&E REAL PROPERTY

READ THE FOLLOWING BEFORE COMPLETING AND SUBMITTING THIS FORM: PG&E occasionally allows the use of its real property by a third party when the proposed use meets certain criteria, including non-interference with PG&E's utility operations and facilities, and non-endangerment to persons, property, and the environment. PG&E may, at its sole and absolute discretion, consider other factors in evaluating a request for such use, including whether any benefit to PG&E or to the local community may be provided by allowing the use. PG&E charges a non-refundable administrative fee of \$1,000.00 for evaluating and processing a request for use of its real property, and will not process a request until this completed form and the administrative fee is received by PG&E. Depending on the nature and complexity of the proposed use, PG&E may require the additional submittal of a formal Work Plan and/or Health and Safety plan detailing the proposed activities on PG&E's land. Absent a request for such information, this completed form will serve as the Work Plan for the proposed use. The form of instrument used to authorize any use of PG&E's land (e.g. license, lease, or grant of easement) will be determined by PG&E in its sole and absolute discretion. If PG&E determines that the instrument to be used is a Grant of Easement, the requesting party will be required to provide a legal description and map of the proposed easement area, signed and stamped by a surveyor licensed in the State of California, and also an offer of consideration, supported by an appraisal prepared by a certified appraiser. In some circumstances, including for any grant of easement, PG&E is required to obtain the permission of the California Public Utility Commission (CPUC) before allowing the use, in which case, the processing time and cost may be significantly increased. If PG&E determines your use requires the approval of the CPUC, PG&E will advise you accordingly. Provision of this request by PG&E to any third party is in no way intended to be an offer to use PG&E's land, and PG&E makes no representation or warranty that submission of your request to PG&E will lead to permission to use PG&E's real property. PG&E has the right to cease consideration of your request at any time for any reason prior to the execution and delivery of a written agreement by both parties. **By signing and submitting this request form to PG&E, you hereby acknowledge and agree to these terms.**

REQUESTOR INFORMATION		IF APPLICABLE, CONTACT/ ATTORNEY INFORMATION	
Charles First	M	Maier Last	Contact / Attorney Name
331 Henry Cowell Dr. Address		Santa Cruz, CA 95060 City, St., Zip	Position / Title
831-334-7000 Telephone Number		Contact / Attorney Firm Name	
	Fax Number	Telephone Number	Fax Number
charlez7000@yahoo.com E-mail Address		E-mail Address	
Legal status of Requestor (e.g. California corporation, individual dba [Business Name], individual, public body of the state of California, etc.)			

LOCATION OF PG&E REAL PROPERTY WHICH REQUESTOR DESIRES TO USE
(Be as complete as possible, i.e. city, county, street, cross-street, assessor's parcel no., township, range, section, location sketch)
Arana Substation Lot in Bostwick Lane, Santa Cruz CA., Santa Cruz County, Parcel ID# 818608812, APN# 026-022-05.

DETAILED DESCRIPTION OF PROPOSED USE OF PG&E'S REAL PROPERTY

(Be as complete as possible. As applicable, include the time frame for the proposed use, number of people/animals as well as any employees or contractors, a description of crops proposed, vehicular use, and a description of any personal property to be brought onto the property or structures to be erected, including fencing. Also, include existing improvements and condition of the area to be used.)

Request driveway access on PG&E's property to ingress/egress the property located at 2521 7th Avenue, Santa Cruz CA 95062.

CLEARLY DESCRIBE ANY FACILITIES PROPOSED TO BE INSTALLED ON PG&E'S REAL PROPERTY

(type, size, number, measurements, materials, include plan/profile drawings)

Not Applicable

DESCRIBE THE PROPERTY'S CULTURAL AND ENVIRONMENTAL RESOURCES

(% wooded, vacant land, wetlands, creeks, waterways etc.):

20% Lightly wooded & vacant land. Arana substation yard (80%)

DESCRIBE ANY POTENTIAL ECONOMIC, SOCIAL OR POLITICAL ISSUES OF CONTENTION

(e.g., project funding issues, scheduling, environmental liabilities):

Not Applicable

WILL PG&E NEED TO MAKE ANY PHYSICAL CHANGES TO THE REAL PROPERTY OR FACILITIES TO ACCOMMODATE THIS REQUEST (I.E., SOIL EXCAVATIONS, INCREASE/DECREASE OF GRADE)?

☐ YES. DESCRIBE BELOW ☒ NO

LIST AND ATTACH FEDERAL, STATE, AND LOCAL PERMITS GRANTED OR APPLIED FOR. IF DOCUMENTS ARE NOT YET AVAILABLE, LIST DATES OF AVAILABILITY AND CONTACT INFO.

Not Applicable

BRAD C. BRERETON (SBN 111266)
AARON J. MOHAMED (SBN 245915)
BRERETON LAW OFFICE
1362 Pacific Avenue, Suite 220
Santa Cruz, CA 95060
Tel: (831) 429-6391
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ajm@brereton.law

Attorney for Plaintiff
CHARLES MAIER

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Alex Calvo, Clerk
By: Helena Hanson, Deputy

Helena J. Hanson

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CRUZ
UNLIMITED JURISDICTION

CHARLES MAIER, an individual,
Plaintiff.

v.

PACIFIC GAS AND ELECTRIC
COMPANY, a California Corporation, and
DOES 1-50,
Defendants.

CASE NO.

**DECLARATION OF NATHAN
CARROLL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Date: March 28, 2019
Time: 8:30 am
Dept: 5

I, Nathan Carroll, hereby declare as follows:

1. I am an individual above the age of eighteen, residing in the City of Santa Cruz, California. I have personal knowledge of the matters set forth in this declaration. As to those matters stated on information and belief I am informed and believe them to be true. If called to testify regarding these matters, I could do so competently.

2. My current residence address is 2521 7th Ave., Santa Cruz, CA 95062. I rent this residence from Plaintiff Charles Maier (the "Maier Property"). I have rented this house from Mr. Maier for approximately the past five years.

3. Upon moving into the Maier Property home on 7th Ave., I noticed that the

1 backyard of the home bordered on what appeared to be an empty lot directly west of
2 the Maier Property (the "Easement Area"). The Easement Area opened onto Bostwick
3 Lane, around the corner from the Maier Property.

4 4. I am aware of multiple people in the neighborhood regularly using the
5 Easement Area for parking vehicles, ingress and egress, and for storage of personal
6 items. I also noticed a tree-house and tires swing had been erected on the Easement
7 Area and I am aware of children playing on these structures. I am aware that Charles
8 Maier used the Easement Area in such a manner.

9 5. Upon moving into the Maier Property, I determined that it was much
10 easier to access the Property via the Easement Area on Bostwick Lane than via the
11 driveway on 7th Ave. The regular driveway on the 7th Ave. side of the Maier Property is
12 a rather dangerous pull-out onto 7th Ave. where cars drive quickly after getting off of
13 Soquel Ave. Furthermore, the nature of the road and the existence of a large tree to
14 the north of the Maier property partially obscure the view as you attempt to pull out onto
15 7th Ave.

16 6. Therefore, since moving into the Maier Property I regularly used the
17 Easement Area for parking, ingress, and egress, instead of the 7th Ave. driveway. I'm
18 not that saying I never used the driveway, but I always considered that I could park in
19 the Easement Area and regularly did so before it was fenced off by PG&E.

20 7. Even after renting the Maier Property to me, I know that Charles Maier
21 maintained storage of items in the back-yard of the Maier property, which he would
22 regularly access via use of the Easement Area.

23 8. At all times since I moved into the Maier Property, I noticed that PG&E
24 maintained a sign at the edge of the Easement Area which stated "NO PUBLIC
25 PARKING." No representative of PG&E ever gave permission for me or, to my
26 knowledge, anyone else to use the Easement Area.

27 ///

28 ///

1 I declare under penalty of perjury under the Laws of the State of California that
2 the foregoing is True and Correct.

3
4 Date: 1-9-19
5


NATHAN CARROLL

BRAD C. BRERETON (SBN 111266)
AARON J. MOHAMED (SBN 245915)
BRERETON LAW OFFICE
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ajm@brereton.law

Attorney for Plaintiff
CHARLES MAIER

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
1/14/2019 3:57 PM
Alex Calvo, Clerk
By Helena Hanson, Deputy

Helena J. Hanson

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CRUZ
UNLIMITED JURISDICTION

CHARLES MAIER, an individual,
Plaintiff.

v.

PACIFIC GAS AND ELECTRIC
COMPANY, a California Corporation, and
DOES 1-50,
Defendants.

CASE NO.

**DECLARATION OF SCOTT VITALI IN
SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Date: March 28, 2019
Time: 8:30 am
Dept: 5

I, Scott Vitali, hereby declare as follows:

1. I am an individual above the age of eighteen, residing in the City of Santa Cruz, California. I have personal knowledge of the matters set forth in this declaration. As to those matters stated on information and belief I am informed and believe them to be true. If called to testify regarding these matters, I could do so competently.

2. My current residence address is 641 Bostwick Lane, Santa Cruz, CA 95062. My home is next-door to the home owned by Plaintiff Charles Maier located at 2521 7th Ave, directly north of my home. I have lived at this residence for seventeen years.

///

1 3. My family has actually owned the property on Bostwick Lane since
2 approximately 1978. Therefore I have been aware of and familiar with the
3 neighborhood for decades.

4 4. Directly to the west of my home is a vacant lot owned by Defendant
5 PG&E (the "Easement Area"). To the west of the vacant lot is a walled off electrical
6 installation, which I am informed and believe is also owned and operated by PG&E.

7 5. I am informed and believe that prior owners of the 2521 7th Ave. property
8 actually leased the Easement Area from PG&E.

9 6. Until approximately 2004, the Easement Area was largely untended to by
10 PG&E. I remember a PG&E representative once telling me that they were only
11 obligated to maintain four-feet beyond the walls of the electrical installation. I
12 remember having to chase homeless people away who were camping on the Easement
13 Area - it appeared abandoned by PG&E.

14 7. Charles Maier purchased the 2521 7th Ave. property in or around 2004.
15 Shortly thereafter, he began to clear away substantial vegetation that had completely
16 overgrown the Easement Area. Mr. Maier spent many hours maintaining the Easement
17 Area over the years. Thanks to Mr. Maier, the Easement Area became clear enough
18 that it could be used for parking, ingress and egress by neighborhood residents. I know
19 that Mr. Maier regularly used the Easement Area for such purposes. I did as well.

20 8. I eventually constructed a tree-house and tire swing on one of the trees in
21 the Easement Area. This was there for many years and local children would regularly
22 play on these structures. I took the tree house down when PG&E determined to fence
23 off the Easement Area.

24 I declare under penalty of perjury under the Laws of the State of California that
25 the foregoing is True and Correct.

26
27 Date: 1/10/19

28

SCOTT VITALI

Exhibit C

**BRERETON LAW OFFICE
ATTORNEYS**

BRAD C. BRERETON
bcb@brereton.law

PAUL PETERSON
pdp@brereton.law

AARON J. MOHAMED
ajm@brereton.law

DAVID J. TERRAZAS
djt@brereton.law

SASHA SHAHABI
ss@brereton.law

LISA L. COWAN
llc@brereton.law

**The Neary Building
1362 Pacific Avenue, Suite 221
Santa Cruz, California 95060**

Tel: (831) 429-6391

Fax: (831) 459-8298

**A
PROFESSIONAL
CORPORATION**

March 27, 2019

via U.S. Mail, Facsimile, (650) 636-9251, and email: tkeller@kellerbenvenuti.com

Mr. Tobias S. Keller
Keller & Benevenuti LLP
650 California St., Suite 1900
San Francisco, CA 94108

*re: Charles Maier v. PG&E
Santa Cruz County Superior Court Case #18CV01718
Stipulation for Relief from Automatic Stay*

Dear Mr. Keller:

This office represents Charles Maier, Plaintiff in the above referenced matter.

This matter relates to an easement over a portion of property owned by PG&E in Santa Cruz, California. The property in question is a vacant lot bordering on the Arana Substation on Bostwick Lane., Santa Cruz, California, 95062.

My client filed this action on June 14, 2018 after PG&E determined to fence off the vacant lot in question. Prior to the 2018 fencing, my client and many other neighboring homes and business had made open, hostile, and regular use of the vacant lot, arising to an easement by prescription. Further, there is no evidence that this vacant lot was ever dedicated to a public use.

The parties in this matter conducted discovery and have both posed summary judgment motions before the court. Those motions were set for hearing on March 28, 2019. PG&E's Bankruptcy filing of January 29, 2019 has caused the court to stay this matter entirely.

My client is prejudiced by this delay as he is continually without the right to use and enjoy his property. The nature of this matter is not predominately a damage claim, rather, it seeks to vindicate my client's right to use and enjoyment of the vacant lot.

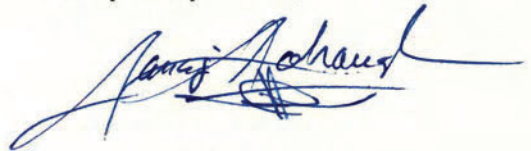
Tobias Keller, Esq.
March 27, 2019
Page 2 of 2.

Therefore I request that you agree to stipulate to lift the automatic bankruptcy stay as it relates to this action, and allow the action to proceed to judgment in Santa Cruz Superior Court. Please contact me to discuss the same.

Alternatively, I always counsel my clients to consider entering into settlement negotiations if such are forthcoming. Therefore please contact me if your client is interested in exploring a settlement to this matter.

Thank you for contacting me to discuss this situation.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Aaron J. Mohamed', with a stylized flourish extending to the right.

Aaron J. Mohamed